

SCOTTSDALE

# CITY COUNCIL MEETING

## AGENDA



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### COUNCIL

Mary Manross, Mayor

Wayne Ecton

Robert W. Littlefield

Cynthia Lukas

Ned O'Hearn

David Ortega

Tom Silverman

Monday, January 6, 2003

Tuesday, January 7, 2003

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## **NOTICE OF CANCELLATION OF MEETING NOTICE OF COMBINED MEETING**

**The Regular Meeting of the City Council scheduled for 5:00 p.m., Monday, January 6, 2003, is cancelled.**

**The following agenda items noticed for the January 6, 2003 meeting will be considered at the Regular Meeting of the City Council scheduled for 5:00 p.m., Tuesday, January 7, 2003.**

**Appointments to Boards, Commissions, and Committees**

**Consent Agenda Items 1 – 11 (except 8 that was withdrawn).**

**Regular Agenda Item 12 -- McDowell Mountain Ranch Park & Aquatic Center is WITHDRAWN. WILL BE RESCHEDULED FOR HEARING AT A DATE NO MORE THAN 90 DAYS AWAY.**

SCOTTSDALE

# CITY COUNCIL MEETING



**\*\*\*AMENDED\*\*\* AGENDA (ITEM 8 WITHDRAWN)**

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**COUNCIL**

Mary Manross, Mayor

Wayne Ecton

Robert W. Littlefield

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David Ortega

Tom Silverman

**Monday, January 6, 2002**

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**5:00 P.M.**

**CITY COUNCIL MEETING**

**Call to Order** – City Hall Kiva Forum, 3939 N. Drinkwater Boulevard

**Roll Call**

**Boards, Commissions, and Committees**

Building Advisory Board of Appeals (1)

Library Board (2)

Planning Commission (1)

District Advisory Board (11-14)

**Public Comment**

Citizens may complete one speaker/citizen comment card per night and submit it to the City Clerk before or during this evening's meeting. Please check the box that refers to "public comment." This "Public Comment" time is reserved for citizen comments regarding non-agendized items. No official Council action can be taken on these items.

- 1. Contract for Legal Services in connection with City of Scottsdale v. Skyridge Estates, L.L.C., et al., Superior Court Case No. CV99-13646.**  
**Request:** Adopt Resolution No. 6210 authorizing the Mayor to execute Contract No. 2000-083A-COS, an outside counsel contract renewal in a maximum amount of Thirty Thousand Dollars (\$30,000.00) with GRAHAM & ASSOCIATES, LTD. for legal services in connection with City of Scottsdale v. Skyridge Estates, L.L.C., et al., Superior Case No. CV99-13646 brought to acquire real property necessary for the McDowell Sonoran Preserve. The contract will enable the City to continue receiving expert legal services with respect to this matter.  
**Related Policies, References:** Resolution No. 6210.  
**Staff Contact(s):** Patrick McGreal, Assistant City Attorney, [pmcgreal@ci.scottsdale.az.us](mailto:pmcgreal@ci.scottsdale.az.us), (480) 312-2405
- 2. Renew contract for legal services in connection with City of Scottsdale adv. Allied Construction, Inc.**  
**Request:** Adopt Resolution No. 6208 authorizing the City Attorney to renew Contract No. 2000-160A-COS and authorize renewal of Contract No. 2000-160A-COS in a maximum amount of Fifty Thousand Dollars (\$50,000) with Holden Brodman PLC for legal services in connection with the dispute among the City of Scottsdale, Allied Construction, Inc., and the City's engineer, Cella Barr Associates, relating to construction at McCormick Ranch Railroad Park.  
**Staff Contact(s):** Steven Bennett, Deputy City Attorney 480-312-2405, [sbennet@scottsdaleaz.gov](mailto:sbennet@scottsdaleaz.gov); David A. Pennartz, City Attorney, 480-312-2405; [dpennartz@scottsdaleaz.gov](mailto:dpennartz@scottsdaleaz.gov)
- 3. Contract for Legal Services in connection with City of Scottsdale v. Glenalden Homes, L.L.C., et al., Superior Court Case No. CV 99-13348.**  
**Request:** Adopt Resolution No. 6211 authorizing the Mayor to execute Contract No. 2001-038A-COS, an outside counsel contract renewal in a maximum amount of Two Hundred Thousand Dollars (\$200,000.00) with the law firm of GRAHAM & ASSOCIATES, LTD. for legal services regarding representation of the City of Scottsdale in the litigation entitled City of Scottsdale v. Glenalden Homes, L.L.C., et al., Superior Court Case No. CV 99-13348, an eminent domain action brought to acquire real property for McDowell Sonoran Preserve.  
**Related Policies, References:** Resolution No. 6211.  
**Staff Contact(s):** Patrick McGreal, Assistant City Attorney, [pmcgreal@ci.scottsdale.az.us](mailto:pmcgreal@ci.scottsdale.az.us) (480) 312-2405.
- 4. Exchange of surplus property for property acquired for the Marshall Way Realignment and relocation benefits.**  
**Request:** Adopt Resolution No. 6209 authorizing Conveyance and Settlement Agreement No. 2002-150-COS between the City of Scottsdale and Thomas Gale and Anne Gale, dba Wiseman and Gale Gallery ("Gales").  
**Related Policies, References:** On September 15, 1997 the City Council Adopted Resolution No. 4871 authorizing the acquisition of real property under the threat of eminent domain for the widening of Indian School Road and the realignment of Marshall Way.  
**Staff Contact(s):** Patrick McGreal, Assistant City Attorney, 480-312-2659, [pmcgreal@ci.scottsdale.az.us](mailto:pmcgreal@ci.scottsdale.az.us); Ron King, Asset Management Coordinator, 480-312-7042, [rking@ci.scottsdale.az.us](mailto:rking@ci.scottsdale.az.us).

**5. Engineering Services Contract for design of Improvements to Camelback Road from 64<sup>th</sup> to 68<sup>th</sup> Street.**

**Request:** AUTHORIZE Engineering Services Contract No. 2003-001-COS with Tri-Core Engineering in the amount of \$ 182,179.00 for the design of Camelback Road Improvements from 64<sup>th</sup> to 68<sup>th</sup> Streets.

**Staff Contact(s):** Dan Walsh, Project Manager, (480) 312-5248, [dwalsh@ci.scottsdale.az.us](mailto:dwalsh@ci.scottsdale.az.us).

**6. Construction Contract Award for Paiute Neighborhood Center Buildings 7 and 9 Remodel.**

**Request:** Authorize Construction Contract Award No. 03PB047 for the renovation of Paiute Neighborhood Center Buildings 7 and 9 to Regency Development, Inc., the lowest responsive, responsible bidder at their lump sum bid of \$ 508,958.00.

**Related Policies, References:** Development Review Board, staff approval (No.57-SD-1983), November 29, 2001; City Council award of architectural design contract (#2002-006-COS), January 7, 2002.

**Staff Contact(s):** Doreen Song P.E., Project Manager, (480) 312-2367, [dsong@scottsdaleaz.gov](mailto:dsong@scottsdaleaz.gov).

**7. Construction Contract Award for Scottsdale Road, Wall/Utility Phase from Hummingbird Lane to Berniel Drive.**

**Request:** Authorize Construction Contract Award No. 03PB041 to Achen-Gardner Engineering, LLC, the lowest responsive bidder, at their total unit price bid of \$2,178,991.80.

This contract will relocate utilities to the west side of Scottsdale Road in preparation for the major widening of Scottsdale Road between Indian Bend Road and Gold Dust Blvd. A screen wall on the west side of the road will also be constructed between the Indian Bend wash and Doubletree Ranch Road.

**Related Policies, References:**

- Intergovernmental Agreement (IGA) No. 96-0001 between City of Scottsdale (city) and Town of Paradise Valley (town) (Approved 2/5/96 by Scottsdale City Council).
- Amendment to IGA No 96-001A which established responsibilities for under grounding of the existing 69 kV electrical power line between the city and the town. (Approved 12/9/02 by Scottsdale City Council and approved 12/19/02 by Paradise Valley Town Council)
- De-annexation Ordinance (Approved 11/7/02 by Paradise Valley Town Council and approved 12/9/02 by Scottsdale City Council).

**Staff Contact(s):** Alex McLaren, Construction and Design Director, (480) 312-7099,

[amclaren@ci.scottsdale.az.us](mailto:amclaren@ci.scottsdale.az.us)

- \*\*\*8. WITHDRAWN -- Authorize the Mayor to acquire real property at 7234 and 7240 East Second Street.**
- 9. DUI arrests and related blood draw services**  
**Request:** Adopt Resolution No. 6205 approving Contract No. 2002-148-COS; and Approve Contract No. 2002-148-COS (Sole Source # 03SS031) between the City and Scottsdale Health Care For Blood Draw Services. Based on current and projected levels of service, contract fees are estimated to be \$49,000 per year.  
**Staff Contact(s):** Lt. Michael Rosenberger, District 1 PD, [mrosenberger@scottsdaleaz.gov](mailto:mrosenberger@scottsdaleaz.gov) (480) 312-7016; Sgt. Dave Larson, District 1 PD, [dlarson@scottsdaleaz.gov](mailto:dlarson@scottsdaleaz.gov) (480) 312-2418; Warren, Monroe, Purchasing Director, [mwarren@scottsdaleaz.gov](mailto:mwarren@scottsdaleaz.gov), (480) 312-5705
- 10. Amend the City's Procurement Code to allow the Purchasing Director to use the bid solicitations of non-Arizona government entities.**  
**Request:** Adopt Ordinance No. 3481, amending Code Section 2-191, Procurements from Solicitation by Other Governmental Entities, to allow the Purchasing Division to use out-of-state governmental entity contracts.  
**Staff Contact(s):** Monroe C. Warren, Purchasing Director, [mwarren@scottsdaleaz.gov](mailto:mwarren@scottsdaleaz.gov), (480) 312-5705.
- 11. 2003/04 Mayor and City Council Mission and Goals**  
**Request:** Consider adopting the 2003/04 Mayor and City Council Mission and Goals, as updated at the October 26, 2002 and November 12, 2002 City Council Workshop. The Mission and Goals were originally created by Council in Fall 2000. These statements are meant to be fluid and flexible, i.e. the Council reviews and modifies them each year to ensure they reflect changing goals and priorities. Upon approval, the Mission and Goals will be incorporated within the upcoming budget planning process, printed in City publications, and will become a tool for the City Manager to ensure further alignment of City-related programming with the Council's goals and priorities for Scottsdale.  
**Related Policies, References:** 2002/03 Mission and Goals and revised 2003/04 Mission and Goals.  
**Staff contact:** Natalie Lewis, 480-312-7806, [nlewis@scottsdaleAZ.gov](mailto:nlewis@scottsdaleAZ.gov)

**Regular Agenda begins on the following page**

**12. McDowell Mountain Ranch Park & Aquatic Center**

**Request:** Approve a revised Municipal Use Master Site Plan for 40+/- acres.

**Location:** Southeast corner of Thompson Peak Parkway and McDowell Mountain Ranch Road

**Reference:** 20-UP-1994#2

**Staff Contact(s):** Kira Wauwie AICP, Project Coordination Manager, 480-312-7061,  
[kwauwie@www.ScottsdaleAZ.gov](mailto:kwauwie@www.ScottsdaleAZ.gov)

**Public Comment**

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**City Manager's Report**

**Mayor and Council Items**

**Adjournment**

Section 2.17 of the Scottsdale City Code states, "Regular Meetings that are scheduled to be conducted on consecutive days may be combined and held on either of the two (2) days, at the election of the council, and shall be considered a single meeting." The Council may hold over any items noticed on the Monday agenda to the agenda for the Tuesday meeting.

# CITY COUNCIL REPORT



MEETING DATE: 01/06/03

ITEM NO.   /  

GOAL: Fiscal Management

## SUBJECT

Contract for Legal Services in connection with City of Scottsdale v. Skyridge Estates, L.L.C., et al., Superior Court Case No. CV99-13646.

## REQUEST

Adopt Resolution No. 6210 authorizing the Mayor to execute Contract No. 2000-083A-COS, an outside counsel contract renewal in a maximum amount of Thirty Thousand Dollars (\$30,000.00) with GRAHAM & ASSOCIATES, LTD. for legal services in connection with City of Scottsdale v. Skyridge Estates, L.L.C., et al., Superior Case No. CV99-13646 brought to acquire real property necessary for the McDowell Sonoran Preserve. The contract will enable the City to continue receiving expert legal services with respect to this matter.

### Related Policies, References:

Resolution No. 6210

## BACKGROUND

On July 22, 1999 the City contracted with the law firm of GRAHAM & ASSOCIATES, LTD. to provide specialized and expert legal services relating to the acquisition by eminent domain of real property necessary for the McDowell Sonoran Preserve. Current expenditures are approaching the previously authorized amount of \$30,000.00. This new contract will allow the law firm to continue to represent the City's interests during the pre-trial phase of litigation.

## ANALYSIS & ASSESSMENT

### Recent staff action.

Staff have monitored the work performed under the previous contract.

### Contract process and terms.

This contract was awarded because of the particular expertise of the contractor.

### Significant issues to be addressed.

On July 22, 1999 the City contracted with the law firm of GRAHAM & ASSOCIATES, LTD. to commence City of Scottsdale v. Skyridge Estates, L.L.C., et al., to acquire real property by eminent domain necessary for the McDowell Sonoran Preserve and to provide specialized and expert legal services with respect to that action. Approval of this contract will allow uninterrupted representation of the City's interests.

**Community involvement.** The proceedings were initiated by the City to acquire the subject property for inclusion within the McDowell Sonoran Preserve established by the City as a park for desert and mountain preservation. Payment of legal fees does not involve a public outreach process.

Action Taken \_\_\_\_\_

**RESOURCE IMPACTS****Available funding.**

This contract will be paid from funds reserved for the acquisition of real property with McDowell Sonoran Preserve study boundary. This contract will be paid from funds available in capital account number 52140.

**Staffing, workload impact.**

This matter requires the use of resources beyond those available to the City in-house.

**OPTIONS & STAFF  
RECOMMENDATION****Description of Option A:**

The scope of this litigation requires resources beyond those available to the City in-house. In addition, aside from the fact that GRAHAM & ASSOCIATES, LTD. are providing top quality representation, it would be extremely financially inefficient to seek other representation at this point in the litigation. Consequently, the only alternative to continuing this contract would be to settle this action.

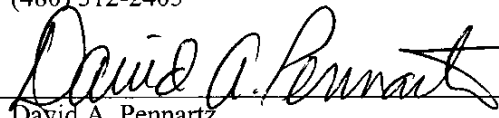
**RESPONSIBLE DEPT(S)**

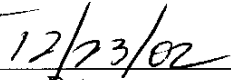
General Government, City Attorney's Office – Civil Division

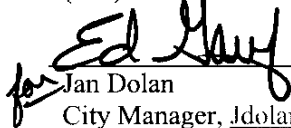
**STAFF CONTACT(S)**

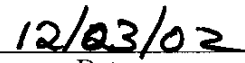
Patrick McGreal, Assistant City Attorney, [pmcgreal@ci.scottsdale.az.us](mailto:pmcgreal@ci.scottsdale.az.us)  
(480) 312-2405

**APPROVED BY**

  
\_\_\_\_\_  
David A. Pennartz,  
City Attorney, [dpennartz@ci.scottsdale.az.us](mailto:dpennartz@ci.scottsdale.az.us),  
(480) 312-2405

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
for Jan Dolan  
City Manager, [jdolan@ci.scottsdale.az.us](mailto:jdolan@ci.scottsdale.az.us)  
(480) 312-2422

  
\_\_\_\_\_  
Date

**ATTACHMENTS**

1. Resolution No. 6210
2. Contract No. 2000-083A-COS

RESOLUTION NO. 6210

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO CONTRACT FOR LEGAL SERVICES, NO. 2001-083A-COS, WITH THE LAW FIRM OF GRAHAM & ASSOCIATES, LTD.

WHEREAS, the City of Scottsdale has previously contracted with GRAHAM & ASSOCIATES, LTD. for legal services in connection with City of Scottsdale v. Skyridge Estates, L.L.C., et al., Superior Case No. CV 99-13646, brought to acquire real property necessary for the McDowell Sonoran Preserve; and

WHEREAS, the City of Scottsdale desires that GRAHAM & ASSOCIATES continue to provide legal services in connections with City of Scottsdale v. Skyridge Estates, L.L.C., et al., Superior Case No. CV 99-13646;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. Mayor Mary Manross is hereby authorized and directed to execute, on behalf of the City of Scottsdale, Contract for Legal Services, No. 2000-083A-COS, an agreement between the City of Scottsdale and the law firm of GRAHAM & ASSOCIATES, LTD. for the provision of legal services.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Scottsdale this 6th day of January, 2003.


ATTEST:

CITY OF SCOTTSDALE, an  
Arizona municipal corporation

By: \_\_\_\_\_  
Sonia Robertson,  
City Clerk

By: \_\_\_\_\_  
Mary Manross,  
Mayor

APPROVED AS TO FORM:

By:   
David A. Pennartz,  
City Attorney



**CONTRACT FOR LEGAL SERVICES  
CITY OF SCOTTSDALE  
City Attorney's Office**

THIS CONTRACT is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between the **City of Scottsdale**, a municipal corporation, hereinafter called **CITY**, and the law firm of **Graham & Associates, LTD** hereinafter called **COUNSEL**.

CITY having determined it to be in its best interest to contract with attorneys not in its employ who, by experience and training, are qualified to assist in connection with **City of Scottsdale v. Skyridge Estates, L.L.C., et al., Superior Case No. CV99-13646** brought to acquire real property necessary for the McDowell Sonoran Preserve.

CITY having satisfied itself as to the qualifications of COUNSEL as named above.

NOW, THEREFORE, it is agreed between the parties as follows:

1. **Scope of Service and Representation.** COUNSEL agrees to perform all necessary legal services, including investigation, legal research, preparation of pleadings, legal memoranda and briefs, and appearances in court, in representing the City. Such legal services shall be carried out in cooperation with the City Attorney's Office who shall at all times be apprised of the status of all matters. No major decisions regarding the resolution of the legal issues or litigation, in whole or in part, shall be made without the prior approval of the City Attorney's Office. All offers of compromise made by plaintiff(s) shall be promptly transmitted to CITY through its City Attorney's Office, together with COUNSEL'S recommendations. City will be responsible for obtaining proper authority to accept a compromise or for obtaining authority to make a counter-offer. No appeals will be taken from judgments in any litigation without prior approval of City, acting through its City Attorney's Office.

2. **Advice and Status Reporting.** COUNSEL shall provide CITY with timely advice of all significant developments arising during performance of their services hereunder orally or in writing, as COUNSEL consider appropriate. COUNSEL shall provide copies of all pleadings and other documents prepared by COUNSEL, including research memoranda prepared by COUNSEL, unless they have been otherwise provided to the City Attorney's Office.

3. **Compensation.** CITY agrees to pay COUNSEL for services rendered hereunder as follows:

- A. Two Hundred Dollars (\$200.00) per hour for M. Graham.
- B. One Hundred and Seventy-Five Dollars (\$175.00) per hour for J. Nicoletti-Jones; W. McDonald and K. Patterson.
- C. One Hundred and Fifty Dollars (\$150.00) per hour for D. Rohwer
- D. One Hundred and Twenty-Five Dollars (\$125.00) per hour for Jr. Associates.
- E. One Hundred Dollars (\$100.00) per hour for L. Fain; C. Vallarelli; C. Lysle.

- F. Seventy-Five Dollars (\$75.00) per hour for D. Lewerke, K. Harper and M. Hoffner.

All services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. CITY shall not be billed for use of COUNSEL'S "runners", but may be billed for messenger service required when COUNSEL'S runner is not available. Total money paid under this contract **shall not exceed Thirty Thousand Dollars (\$30,000.00)**. Fees and expenses shall be billed on a monthly basis and paid by CITY within forty-five (45) days.

4. Travel. Approval for travel shall be obtained through the City Attorney's Office prior to departure. Travel time may be billed to CITY, with the exception of travel time to CITY to meet with CITY representatives or the City Council. "Reasonable expenses" means expenses not exceeding one hundred eighty five dollars (\$185.00) per night for hotel rooms, seventy-five dollars (\$75.00) per person per day for meals including gratuity, and for the rental charges of the most economical type of rental car available. Where possible, COUNSEL and consultants and experts and subcontractors shall stay at hotels that charge a government rate. When traveling by airplane, whenever possible, reduced fare tickets shall be purchased. Gasoline shall not be billed to CITY except when a rental car is used out-of-state.

5. Reimbursement for Expenses. All costs and other disbursements for outside services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. All copying charges shall be billed at no more than fifteen cents (\$.15) per page. To the extent practical, large photocopying tasks will be sent out to an outside copy service in an effort to further reduce photocopying costs. Outgoing faxes shall be billed for actual long distance charges incurred, not on a per page basis. On-line database retrieval charges (i.e. Lexis, Westlaw, CompuServe, Dialogue, etc.) shall be billed at actual cost.

6. Billing Procedures. In addition to the billing procedures set forth elsewhere in this Contract, COUNSEL shall follow these billing procedures:

A. "Unit billing" shall not be done. COUNSEL shall bill only for actual time spent on a task, and each task shall be itemized (e.g. tel. to opposing counsel (.2); extended tel. to Mr. Smith (.3); prepare motion to continue (.3).

B. Secretarial, word processing or other overtime shall not be billed (e.g., preparation of documents which are computerized or on a form, such as subpoenas, notices of deposition, independent medical examinations, medical authorizations, trial notices, uniform interrogatories, and requests to produce); only the actual time spent by the attorney reviewing, revising or drafting such documents shall be billed.

C. Whenever possible, attorneys shall minimize time spent consulting with one another and agree to use their best efforts to minimize the costs of the legal representation to CITY. Work on this matter billed by attorneys not listed must be approved by the City Attorney's Office in advance.

D. All consultants, experts and subcontractors engaged to provide services to COUNSEL in the performance of this agreement, and the use and extent of those services, shall be

approved by the City Attorney's Office prior to them providing the services. Payment of their expenses will be subject to the same terms as paragraphs 4 and 5 above.

E. COUNSEL will submit monthly billings for services rendered and expenses incurred, which shall be paid by the City Attorney's Office. Each bill shall also contain, in addition to information required elsewhere in this Contract: 1) fees and costs incurred in the preceding month; 2) the cumulative total of fees and costs to date; 3) the City Attorney's Office contract number 2002-014 and; 4) the unbilled amount remaining on the contract. COUNSEL will use its best efforts to inform the City Attorney's Office eight weeks prior to COUNSEL billing the final fees and costs authorized under this contract. CITY will pay no fees incurred over and above the contract amount without prior authorization from CITY.

7. Maintenance of Records. In compliance with CITY'S standard procedure, all work performed in connection with this Contract shall be subject to audit. COUNSEL shall maintain all books, documents, papers, accounting records, and other evidence pertaining to time billed and to costs incurred on a particular lawsuit, and to make such materials available at their offices at all reasonable times during the Contract period and for at least three (3) years from the date of final payment for inspection by CITY or any authorized representatives of CITY, and copies thereof shall be furnished, if requested, at CITY'S expense.

8. Conflict of Interest. COUNSEL warrants and covenants that COUNSEL presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Contract a violation of any applicable local, state, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, COUNSEL shall promptly notify CITY of the existence of such conflict of interest, so that CITY may determine whether to terminate this Contract. The City Attorney is authorized to grant customary conflicts waivers to COUNSEL on behalf of the CITY, as are not adverse to the CITY's legal interests in his professional judgment. Otherwise, COUNSEL shall be free to dispose of such portion of their entire time, energy and skill as are not required to be devoted to CITY in such manner as they see fit and to such persons, firms or corporations as they deem advisable so long as no conflict of interest exists.

9. Reporting Requirements

A. Within sixty (60) days of receipt of a case, or at the time disclosure statements are first filed, whichever is sooner, COUNSEL shall provide CITY with an initial written evaluation containing the following:

1. A summary of the case's facts and issues;
2. An evaluation of the potential exposure;
3. An outline of the course of action COUNSEL intends to pursue in the case (e.g., names and/or categories of witnesses to be interviewed or deposed; experts to be retained; motions to be filed; etc.);
4. An estimate of the cost to defend the case through trial;

5. A cost/benefit analysis, including recommendations as to early settlement or offers of judgment; and,
6. The name of the attorney who will be primarily responsible for handling the case, and the names of others who will assist that person.

10. Additional Investigation. Whenever additional investigation is deemed desirable by COUNSEL and can be provided by use of non-attorney investigators, COUNSEL shall notify CITY through the City Attorney's Office of such need, and CITY may elect, at its option, to conduct such investigation. In this event, CITY shall be solely responsible for the accuracy of the facts or other information developed in response to such requests.

11. Termination. CITY may terminate this Contract upon giving ten (10) days written notice for convenience or cause. Any default by COUNSEL, if COUNSEL fails to comply with any of the conditions of this Contract, or services which provide unsatisfactory performance as judged by the Contract Administrator, and failure to provide CITY, upon request, reasonable assurance of future performance, shall be causes allowing CITY to terminate this Contract. In the event of termination for cause, CITY shall not be liable to COUNSEL for any amount, and COUNSEL shall be liable to CITY for any and all damages sustained by reason of the default which gave rise to the termination. Any notice of cancellation shall specify the particular lawsuit or lawsuits to which it applies, and any lawsuit not particularly specified shall continue to be handled by COUNSEL and, as to those, this Contract will continue in effect; provided, however, the right is retained by CITY to terminate services on any lawsuit by notifying COUNSEL in writing.

12. Notices. When notice or correspondence is required to be sent to CITY, it shall be sent to the Contract Administrator named below:

City Attorney's Office  
City of Scottsdale  
3939 Drinkwater Blvd.  
Scottsdale, Arizona 85251  
Attn: Donna M. Bronski

Should the Contract Administrator change, CITY will notify COUNSEL in writing.

13. Indemnification For Liability and Professional Liability

To the fullest extent permitted by law COUNSEL, its successors, assigns and guarantors, shall defend, indemnify and hold harmless CITY, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any negligent, or intentional actions, acts, errors, mistakes or omissions caused in whole or part by COUNSEL relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of COUNSEL'S and Subcontractor's employees.

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

14. Insurance Representations and Requirements

General: Counsel agrees to comply with all applicable City Ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of COUNSEL, shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to CITY. Failure to maintain insurance as specified may result in termination of this Contract at CITY'S option.

No Representation of Coverage Adequacy: By requiring insurance herein, CITY does not represent that coverage and limits will be adequate to protect COUNSEL. CITY reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify any insurance deficiency shall not relieve COUNSEL from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of subject contract is satisfactorily performed, completed and formally accepted by the CITY, unless specified otherwise in this Contract.

Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.

Use of Subcontractors: If any work under this agreement is subcontracted in any way, COUNSEL shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting CITY and COUNSEL. COUNSEL shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

Evidence of Insurance: Prior to commencing any work or services under this Contract, COUNSEL shall furnish CITY with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by COUNSEL'S insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions, and limits of coverage and such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale shall reasonable rely upon the Certificate of Insurance

as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the cited policies expire during the life of this Contract, it shall be COUNSEL'S responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions:

1. CITY, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies: a) Commercial General Liability, b) Auto Liability and c) Excess Liability-Follow Form to underlying insurance as required.
2. COUNSEL'S insurance shall be primary insurance as respects performance of subject contract.
3. All policies, except Professional Liability insurance waive rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by COUNSEL under this contract.
4. Certificate shall cite 30-day advance notice of cancellation provision. If standard ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

#### Required Coverage

Commercial General Liability: COUNSEL shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$1,000,000 Products and Complete Operations Annual Aggregate, and a \$1,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

Professional Liability: If the Contract is the subject of any professional services or work, or if COUNSEL engages in any professional services or work adjunct or residual to performing the work under this Contract, COUNSEL shall maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by COUNSEL, or anyone employed by COUNSEL, or anyone for whose acts, mistakes, errors and omissions COUNSEL is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the work or services, and COUNSEL shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

Vehicle Liability: COUNSEL shall maintain Business Automobile Liability insurance with a limit of \$500,000 each accident on COUNSEL'S owned, hired, and non-owned vehicles assigned to or used in the performance of the COUNSEL'S work or services under this Contract. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

Workers' Compensation Insurance: COUNSEL shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of COUNSEL'S employees engaged in the performance of work or services under this Contract and shall also maintain Employers Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

15. Choice of Law. This Contract shall be governed and interpreted according to the laws of the State of Arizona.

16. Whole Agreement. This Contract constitutes the entire understanding of the parties, and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

17. Amendments. Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract. Should there be a change in the Contract Administrator, however, CITY will only need to notify COUNSEL in writing.

18. Non-Assignment. Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the City Attorney.

19. Cancellation. CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract in any capacity, or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. § 38-511).

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21. Severability. Should any part of this agreement be declared in a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

IN WITNESS WHEREOF, the City of Scottsdale, by its Mayor this \_\_\_\_ day of \_\_\_\_\_, 2003.

City of Scottsdale, a  
municipal corporation

By: \_\_\_\_\_  
Mary Manross, Mayor

Graham & Associates, LTD

By: Michael A. Graham  
Its: PROS

ATTEST:

\_\_\_\_\_  
Sonia Robertson, City Clerk

APPROVED AS TO FORM:  
David A. Pennartz  
David A. Pennartz, City Attorney

**Note to Attorneys: Remember to send along a copy of your Certificate of Insurance with the Contract for Legal Services.**



# CITY COUNCIL REPORT



MEETING DATE: 01/06/2003    ITEM No. 2    GOAL: Fiscal Management

## **SUBJECT**

**City of Scottsdale adv. Allied Construction, Inc.**

## **REQUEST**

Adopt Resolution No. 6208 authorizing the City Attorney to renew Contract No. 2000-160A-COS

Authorize renewal of Contract No. 2000-160A-COS in a maximum amount of Fifty Thousand Dollars (\$50,000) with Holden Brodman PLC for legal services in connection with the dispute among the City of Scottsdale, Allied Construction, Inc., and the City's engineer, Cella Barr Associates, relating to construction at McCormick Ranch Railroad Park.

## **BACKGROUND**

On February 9, 1999, the City first contracted with the law firm of Brockelman & Brodman, P.L.C. to provide specialized legal services relating to a construction litigation dispute among the City, Allied, and Cella Barr. That dispute related to construction work performed in 1996-97 at the McCormick Railroad Park. This litigation has been pending since 1998.

The City has renewed its contract with the law firm three times. Outside counsel services have been extensive in order to participate in two, court-ordered mediations, prepare and respond to several pre-trial motions, and conduct lengthy case discovery. The parties have identified approximately thirty-five individuals expected to be called as trial witnesses. In addition, the depositions of expert witnesses have taken longer than expected, in part because of supplementary expert reports the Court allowed Allied to file beyond the discovery cutoff date.

The Court has now ordered a five-week trial to begin January 6, 2003. The City has extended settlement offers and filed two alternative Offers of Judgment that the Plaintiffs have refused to accept. The possibility of the parties settling the case at this time is remote.

## **ANALYSIS & ASSESSMENT**

### **Contract process and terms.**

Council approved the most recent contract renewal one year ago. At that time, an estimate was made as to legal fees necessary to proceed through trial. Depending upon the Court's ruling on anticipated pre-trial motions, the total fees for services may not exceed the \$150,000 renewal amount approved last year. In order to avoid the possibility of future legal fees exceeding the current contract limit, staff is exercising caution in requesting an additional \$50,000 for possible pre-trial and trial services.

### **Significant issues to be addressed.**

With a January trial setting, the parties will prepare for and argue several

Action Taken \_\_\_\_\_

preliminary motions in limine. The judge assigned to the case presides over an all-electronic courtroom. As a result, the City has contracted with an outside firm, Legal Technology Consulting, LLC, in order to help organize, scan, and format over 1,300 exhibits consisting of more than 8,000 pages of documents as well as assist in the City's courtroom presentation during the five-week trial.

**Community involvement.**

Payment of legal fees does not involve a public outreach process.

**RESOURCE IMPACTS**

**Available funding.** Funds are available in the City Attorney's Office Outside Counsel Account (100-01050-52140).

**Future budget implications.**

No additional outside counsel fees are expected once the trial is completed in February.

**Staffing, workload impact.**

Current legal staff will continue to provide contract administration and legal support services to outside counsel. No additional staff will be required.

**STAFF**

**RECOMMENDATION**

**Recommended Approach:**

This construction-related litigation requires specialized legal representation, and outside counsel has assumed responsibility for the case preparation since the lawsuit was filed five years ago. It would not be feasible for in-house staff to timely develop the necessary case familiarity and specialized expertise in order to assume full case preparation responsibility and meet the Court's trial schedule.

**RESPONSIBLE DEPT(S)**

City Attorney's Office

**STAFF CONTACT(S)**

Steven Bennett, Deputy City Attorney 480-312-2405

David A. Pennartz, City Attorney 480-312-2405

**APPROVED BY**

Name

Date

David A. Pennartz, City Attorney

Name

Date

Jan M. Dolan, City Manager

**ATTACHMENTS**

1. Resolution No. 6208
2. Contract No. 2000-160A-COS

(Continued)

RESOLUTION NO. 6208

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY TO RENEW CONTRACT FOR LEGAL SERVICES, NO. 2000-160A-COS, WITH THE LAW FIRM OF HOLDEN BRODMAN, P.L.C.

WHEREAS, the City Attorney's Office has previously contracted with HOLDEN BROCKELMAN, P.L.C. for specialized legal services in connection with the dispute among the City of Scottsdale, Allied Construction, Inc., and Cella Barr Associates, Inc. relating to the 1996-1997 construction at McCormick Ranch Railroad Park; and

WHEREAS, the City of Scottsdale desires that HOLDEN BRODMAN, P.L.C., the successor to HOLDEN BROCKELMAN, P.L.C., continue to provide legal services in connection with the dispute and litigation relating to the McCormick Ranch Railroad Park construction;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. Mayor Mary Manross is hereby authorized and directed to execute, on behalf of the City of Scottsdale, Contract for Legal Services, No. 2000-160A-COS, a renewal of an agreement between the City of Scottsdale and the law firm of HOLDEN BRODMAN, P.L.C. for the provision of legal services.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Scottsdale this 6th day of January, 2003.

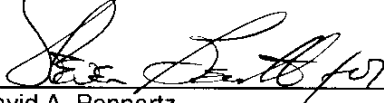
ATTEST:

CITY OF SCOTTSDALE, an  
Arizona municipal corporation

By: \_\_\_\_\_  
Sonia Robertson,  
City Clerk

By: \_\_\_\_\_  
Mary Manross,  
Mayor

APPROVED AS TO FORM:

By:   
David A. Pennartz,  
City Attorney



**CONTRACT FOR LEGAL SERVICES  
CITY OF SCOTTSDALE  
City Attorney's Office**

THIS CONTRACT is made and entered into on this 6th day of January, 2003, by and between the **City of Scottsdale**, a municipal corporation, hereinafter called **CITY**, and the law firm of **Holden Brodman, PLC**, hereinafter called **COUNSEL**.

CITY, having determined it to be in its best interest to contract with attorneys not in its employ who, by experience and training, are qualified to assist in connection with **the dispute among the City of Scottsdale, Allied Construction, Inc., and Cella Barr Associates relating to the construction at McCormick Ranch Railroad Park**; and

CITY having satisfied itself as to the qualifications of COUNSEL as named above and the need to renew its contract with COUNSEL for the provision of legal services.

NOW, THEREFORE, it is agreed between the parties as follows:

1. Scope of Service and Representation. COUNSEL agrees to perform all necessary legal services, including investigation, legal research, preparation of pleadings, legal memoranda and briefs, and appearances in court, in representing the City. Such legal services shall be carried out in cooperation with the City Attorney's Office who shall at all times be apprised of the status of all matters. No major decisions regarding the resolution of the legal issues or litigation, in whole or in part, shall be made without the prior approval of the City Attorney's Office. All offers of compromise made by plaintiff(s) shall be promptly transmitted to CITY through its City Attorney's Office, together with COUNSEL'S recommendations. City will be responsible for obtaining proper authority to accept a compromise or for obtaining authority to make a counter-offer. No appeals will be taken from judgments in any litigation without prior approval of City, acting through its City Attorney's Office.

2. Advice and Status Reporting. COUNSEL shall provide CITY with timely advice of all significant developments arising during performance of their services hereunder orally or in writing, as COUNSEL consider appropriate. COUNSEL shall provide copies of all pleadings and other documents prepared by COUNSEL, including research memoranda prepared by COUNSEL, unless they have been otherwise provided to the City Attorney's Office.

3. Compensation. CITY agrees to pay COUNSEL for services rendered hereunder as follows:

- A. One Hundred and Twenty Five Dollars (\$125.00) per hour for Partners.
- B. One Hundred and Ten Dollars (\$110.00) per hour for Associates.
- C. Sixty-Five Dollars (\$65.00) per hour for Paralegals.

All services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. CITY shall not be billed for use of COUNSEL'S "runners", but may be billed for messenger service required when COUNSEL'S runner is not available.

Total money paid under this contract renewal **shall not exceed Fifty Thousand Dollars (\$50,000.00)**. Fees and expenses shall be billed on a monthly basis and paid by CITY within forty-five (45) days.

4. Travel. Approval for travel shall be obtained through the City Attorney's Office prior to departure. Travel time may be billed to CITY, with the exception of travel time to CITY to meet with CITY representatives or the City Council. "Reasonable expenses" means expenses not exceeding one hundred eighty five dollars (\$185.00) per night for hotel rooms, seventy-five dollars (\$75.00) per person per day for meals including gratuity, and for the rental charges of the most economical type of rental car available. Where possible, COUNSEL and consultants and experts and subcontractors shall stay at hotels that charge a government rate. When traveling by airplane, whenever possible, reduced fare tickets shall be purchased. Gasoline shall not be billed to CITY except when a rental car is used out-of-state.

5. Reimbursement for Expenses. All costs and other disbursements for outside services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. All copying charges shall be billed at no more than fifteen cents (\$.15) per page. To the extent practical, large photocopying tasks will be sent out to an outside copy service in an effort to further reduce photocopying costs. Outgoing faxes shall be billed for actual long distance charges incurred, not on a per page basis. On-line database retrieval charges (i.e. Lexis, Westlaw, CompuServe, Dialogue, etc.) shall be billed at actual cost.

6. Billing Procedures. In addition to the billing procedures set forth elsewhere in this Contract, COUNSEL shall follow these billing procedures:

A. "Unit billing" shall not be done. COUNSEL shall bill only for actual time spent on a task, and each task shall be itemized (e.g. tel. to opposing counsel (.2); extended tel. to Mr. Smith (.3); prepare motion to continue (.3).

B. Secretarial, word processing or other overtime shall not be billed (e.g., preparation of documents which are computerized or on a form, such as subpoenas, notices of deposition, independent medical examinations, medical authorizations, trial notices, uniform interrogatories, and requests to produce); only the actual time spent by the attorney reviewing, revising or drafting such documents shall be billed.

C. Whenever possible, attorneys shall minimize time spent consulting with one another and agree to use their best efforts to minimize the costs of the legal representation to CITY. Work on this matter billed by attorneys not listed must be approved by the City Attorney's Office in advance.

D. All consultants, experts and subcontractors engaged to provide services to COUNSEL in the performance of this agreement, and the use and extent of those services, shall be approved by the City Attorney's Office prior to them providing the services. Payment of their expenses will be subject to the same terms as paragraphs 4 and 5 above.

E. COUNSEL will submit monthly billings for services rendered and expenses incurred, which shall be paid by the City Attorney's Office. Each bill shall also contain, in addition to information required elsewhere in this Contract: 1) fees and costs incurred in the preceding month; 2) the cumulative total of fees and costs to date; 3) the City Attorney's Office contract number 2002-012 and; 4) the unbilled amount remaining on the contract. COUNSEL will use its best efforts to inform the City Attorney's Office eight weeks prior to COUNSEL billing the final fees and costs authorized under this contract. CITY will pay no fees incurred over and above the contract amount without prior authorization from CITY.

7. Maintenance of Records. In compliance with CITY'S standard procedure, all work performed in connection with this Contract shall be subject to audit. COUNSEL shall maintain all books, documents, papers, accounting records, and other evidence pertaining to time billed and to costs incurred on a particular lawsuit, and to make such materials available at their offices at all reasonable times during the Contract period and for at least three (3) years from the date of final payment for inspection by CITY or any authorized representatives of CITY, and copies thereof shall be furnished, if requested, at CITY'S expense.

8. Conflict of Interest. COUNSEL warrants and covenants that COUNSEL presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Contract a violation of any applicable local, state, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, COUNSEL shall promptly notify CITY of the existence of such conflict of interest, so that CITY may determine whether to terminate this Contract. The City Attorney is authorized to grant customary conflicts waivers to COUNSEL on behalf of the CITY, as are not adverse to the CITY's legal interests in his professional judgment. Otherwise, COUNSEL shall be free to dispose of such portion of their entire time, energy and skill as are not required to be devoted to CITY in such manner as they see fit and to such persons, firms or corporations as they deem advisable so long as no conflict of interest exists.

9. Reporting Requirements

A. Within sixty (60) days of receipt of a case, or at the time disclosure statements are first filed, whichever is sooner, COUNSEL shall provide CITY with an initial written evaluation containing the following:

1. A summary of the case's facts and issues;
2. An evaluation of the potential exposure;
3. An outline of the course of action COUNSEL intends to pursue in the case (e.g., names and/or categories of witnesses to be interviewed or deposed; experts to be retained; motions to be filed; etc.);
4. An estimate of the cost to defend the case through trial;
5. A cost/benefit analysis, including recommendations as to early settlement or offers of judgment; and,

6. The name of the attorney who will be primarily responsible for handling the case, and the names of others who will assist that person.

10. Additional Investigation. Whenever additional investigation is deemed desirable by COUNSEL and can be provided by use of non-attorney investigators, COUNSEL shall notify CITY through the City Attorney's Office of such need, and CITY may elect, at its option, to conduct such investigation. In this event, CITY shall be solely responsible for the accuracy of the facts or other information developed in response to such requests.

11. Termination. CITY may terminate this Contract upon giving ten (10) days written notice for convenience or cause. Any default by COUNSEL, if COUNSEL fails to comply with any of the conditions of this Contract, or services which provide unsatisfactory performance as judged by the Contract Administrator, and failure to provide CITY, upon request, reasonable assurance of future performance, shall be causes allowing CITY to terminate this Contract. In the event of termination for cause, CITY shall not be liable to COUNSEL for any amount, and COUNSEL shall be liable to CITY for any and all damages sustained by reason of the default which gave rise to the termination. Any notice of cancellation shall specify the particular lawsuit or lawsuits to which it applies, and any lawsuit not particularly specified shall continue to be handled by COUNSEL and, as to those, this Contract will continue in effect; provided, however, the right is retained by CITY to terminate services on any lawsuit by notifying COUNSEL in writing.

12. Notices. When notice or correspondence is required to be sent to CITY, it shall be sent to the Contract Administrator named below:

City Attorney's Office  
City of Scottsdale  
3939 Drinkwater Blvd.  
Scottsdale, Arizona 85251  
Attn: Steven B. Bennett

Should the Contract Administrator change, CITY will notify COUNSEL in writing.

13. Indemnification For Liability and Professional Liability

To the fullest extent permitted by law COUNSEL, its successors, assigns and guarantors, shall defend, indemnify and hold harmless CITY, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any negligent, or intentional actions, acts, errors, mistakes or omissions caused in whole or part by COUNSEL relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of COUNSEL'S and Subcontractor's employees.

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

14. Insurance Representations and Requirements

General: Counsel agrees to comply with all applicable City Ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of COUNSEL, shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to CITY. Failure to maintain insurance as specified may result in termination of this Contract at CITY'S option.

No Representation of Coverage Adequacy: By requiring insurance herein, CITY does not represent that coverage and limits will be adequate to protect COUNSEL. CITY reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify any insurance deficiency shall not relieve COUNSEL from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of subject contract is satisfactorily performed, completed and formally accepted by the CITY, unless specified otherwise in this Contract.

Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.

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If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the cited policies expire during the life of this Contract, it shall be COUNSEL'S responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions:

1. CITY, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies: a) Commercial General Liability, b) Auto Liability and c) Excess Liability-Follow Form to underlying insurance as required.
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In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the work or services, and COUNSEL shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

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19. Cancellation. CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract in any capacity, or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. § 38-511).

20. Independent Contractor Status. The services COUNSEL provides under the terms of this Contract to CITY are that of an independent contractor, not an employee. CITY will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099. Withholding of income tax is not deducted from contractual payments. As a result of this, COUNSEL may be subject to I.R.S. provisions for payment of estimated income tax.

Consult the local I.R.S. office for current information on estimated tax requirements. Failure to comply may subject COUNSEL to a penalty.

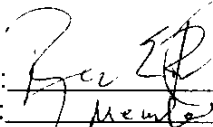
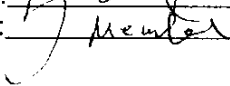
21. Severability. Should any part of this agreement be declared in a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

IN WITNESS WHEREOF, the City of Scottsdale, by its Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

City of Scottsdale, a  
municipal corporation

By: \_\_\_\_\_  
Mary Manross, Mayor

Holden Brodman, PLC

By:  \_\_\_\_\_  
Its:  \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Sonia Robertson, City Clerk

APPROVED AS TO FORM:

 \_\_\_\_\_  
David A. Pennartz, City Attorney

**Note to Attorneys: Remember to send along a copy of your Certificate of Insurance with the Contract for Legal Services.**



# CITY COUNCIL REPORT



MEETING DATE: 01/06/2003    ITEM NO. 3    GOAL: Fiscal Management

## SUBJECT

Contract for Legal Services in connection with City of Scottsdale v. Glenalden Homes, L.L.C., et al., Superior Court Case No. CV 99-13348.

## REQUEST

Adopt Resolution No. 6211 authorizing the Mayor to execute Contract No. 2001-038A-COS, an outside counsel contract renewal in a maximum amount of Two Hundred Thousand Dollars (\$200,000.00) with the law firm of GRAHAM & ASSOCIATES, LTD. for legal services regarding representation of the City of Scottsdale in the litigation entitled City of Scottsdale v. Glenalden Homes, L.L.C., et al., Superior Court Case No. CV 99-13348, an eminent domain action brought to acquire real property for McDowell Sonoran Preserve.

### Related Policies, References:

Resolution No. 6211

## BACKGROUND

This case involves a condemnation proceeding initiated by the City to acquire approximately 200 platted and engineered lots owned by Glenalden Homes L.L.C. located in a master-planned residential development in north Scottsdale known as Troon North. The proceedings were initiated by the City to condemn Glenalden's property for inclusion within the McDowell Sonoran Preserve established by the City for a park for desert and mountain preservation.

At the time this action was commenced, the developer/owner had already tagged native plants for removal. Consequently, shortly after commencement of the case, the City posted a \$5,500,000 immediate possession bond in accordance with required court procedures, all issues concerning the legal authority for the acquisition were resolved in favor of the City, and the City took possession of the property.

Remaining issues concern just compensation and fair market value for the land actually condemned and severance damages, if any, for the land not condemned. An associated issue has been compensation for losses sustained by the Homeowners' Association due to its loss of an anticipated revenue source. These issues are all extremely complicated and include consideration and analysis of planning issues, development costs, development viability, physical properties of the land, and the effect of existing improvements, in addition to more customary valuation concerns. Preliminary exchange of information and opinions indicates that matter involves a difference of opinions of value in excess of \$10,000,000.00, making this case apparently the largest condemnation case in the State of Arizona at this time.

Action Taken \_\_\_\_\_

The case has been handled by Graham & Associates since prior to its commencement. On July 22, 1999 a contract in the amount of \$20,000.00 was entered into with Graham & Associates, Ltd. to commence the action and obtain possession of the property before the owner removed native vegetation. On July 19, 2000 the Council approved a renewal contract in the amount of \$60,000.00. By April, 2001 it had become apparent that this was the largest condemnation action in the State and that legal fees could accrue at the rate of \$50,000.00 or more per month. Accordingly, on April 30, 2001 the Council approved a renewal in the amount of \$200,000.00. Additional renewals in the amount of \$200,000.00 each were approved by the Council on November 26, 2001, June 4, 2002, and on September 9, 2002. This last authorized amount is close to being exhausted.

**ANALYSIS &  
ASSESSMENT**

On July 22, 1999 the City contracted with the law firm of GRAHAM & ASSOCIATES, LTD. to commence City of Scottsdale v. Glenalden Homes, L.L.C., et al., to acquire real property by eminent domain necessary for the McDowell Sonoran Preserve and to provide specialized and expert legal services with respect to that action. The case involves an extremely complex legal and factual issues and continues to be the largest condemnation action in the State of Arizona with an amount at issue in excess of \$10,000,000.00. Current expenditures are approaching the previously authorized amounts. This new contract will allow the firm to continue to represent the City's interests.

The proceedings were initiated by the City to condemn Glenalden's property for inclusion within the McDowell Sonoran Preserve established by the City for a park for desert and mountain preservation. Payment of legal fees does not involve a public outreach process.

**RESOURCE IMPACTS**

The contract will enable the City to continue receiving expert legal services with respect to this matter. This contract will be paid from funds reserved for the acquisition of real property with McDowell Sonoran Preserve study boundary. This contract will be paid from funds available in capital account number 52140.

**OPTIONS & STAFF  
RECOMMENDATION**

The scope of this litigation requires resources beyond those available to the City in-house. In addition, aside from the fact that GRAHAM & ASSOCIATES, LTD. are providing top quality representation, it would be extremely financially inefficient to seek other representation at this point in the litigation. Consequently, the only alternative to continuing this contract would be to settle this action.

**RESPONSIBLE DEPT(S)**


General Government, City Attorney's Office – Civil Division

**STAFF CONTACT(S)**

Patrick McGreal, Assistant City Attorney, [pmcgreal@ci.scottsdale.az.us](mailto:pmcgreal@ci.scottsdale.az.us)  
(480) 312-2405

**APPROVED BY**

  
David A. Pennartz, \_\_\_\_\_  
City Attorney, [dpennartz@ci.scottsdale.az.us](mailto:dpennartz@ci.scottsdale.az.us) Date  
(480) 312-2405

  
Jan Dolan, \_\_\_\_\_  
City Manager, [jdolan@ci.scottsdale.az.us](mailto:jdolan@ci.scottsdale.az.us) Date  
(480) 312-2422

(Continued)

**ATTACHMENTS**

1. Resolution No. 6211
2. Contract No. 2001-038A-COS

*(Continued)*

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RESOLUTION NO. 6211

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO CONTRACT FOR LEGAL SERVICES, NO. 2001-038A-COS, WITH THE LAW FIRM OF GRAHAM & ASSOCIATES, LTD.

WHEREAS, the City Attorney's Office has previously contracted with GRAHAM & ASSOCIATES, LTD. for legal services in connection with City of Scottsdale v. Glenalden Homes, L.L.C., et al., Superior Case No. CV99-13348, brought to acquire real property necessary for the McDowell Sonoran Preserve; and

WHEREAS, the City of Scottsdale desires that GRAHAM & ASSOCIATES, LTD. continue to provide legal services in connections with City of Scottsdale v. Glenalden Homes, L.L.C., et al., Superior Case No. CV99-13348;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. Mayor Mary Manross is hereby authorized and directed to execute, on behalf of the City of Scottsdale, Contract for Legal Services, No. 2001-038A-COS, an agreement between the City of Scottsdale and the law firm of GRAHAM & ASSOCIATES, LTD. for the provision of legal services.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Scottsdale this 6th day of January, 2003.

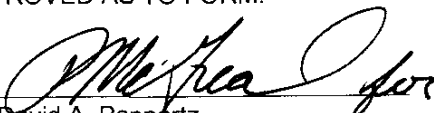
ATTEST:

CITY OF SCOTTSDALE, an  
Arizona municipal corporation

By: \_\_\_\_\_  
Sonia Robertson,  
City Clerk

By: \_\_\_\_\_  
Mary Manross,  
Mayor

APPROVED AS TO FORM:

By:   
David A. Pennartz,  
City Attorney



**CONTRACT FOR LEGAL SERVICES  
CITY OF SCOTTSDALE  
City Attorney's Office**

THIS CONTRACT is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between the **City of Scottsdale**, a municipal corporation, hereinafter called **CITY**, and the law firm of **Graham & Associates, LTD** hereinafter called **COUNSEL**.

CITY having determined it to be in its best interest to contract with attorneys not in its employ who, by experience and training, are qualified to assist in connection with **City of Scottsdale v. Glenalden Homes L.L.C., et al., Superior Court Case No. CV 99-13348, an eminent domain action brought to acquire real property for McDowell Sonoran Preserve.**

CITY having satisfied itself as to the qualifications of COUNSEL as named above.

NOW, THEREFORE, it is agreed between the parties as follows:

1. **Scope of Service and Representation.** COUNSEL agrees to perform all necessary legal services, including investigation, legal research, preparation of pleadings, legal memoranda and briefs, and appearances in court, in representing the City. Such legal services shall be carried out in cooperation with the City Attorney's Office who shall at all times be apprised of the status of all matters. No major decisions regarding the resolution of the legal issues or litigation, in whole or in part, shall be made without the prior approval of the City Attorney's Office. All offers of compromise made by plaintiff(s) shall be promptly transmitted to CITY through its City Attorney's Office, together with COUNSEL'S recommendations. City will be responsible for obtaining proper authority to accept a compromise or for obtaining authority to make a counter-offer. No appeals will be taken from judgments in any litigation without prior approval of City, acting through its City Attorney's Office.

2. **Advice and Status Reporting.** COUNSEL shall provide CITY with timely advice of all significant developments arising during performance of their services hereunder orally or in writing, as COUNSEL consider appropriate. COUNSEL shall provide copies of all pleadings and other documents prepared by COUNSEL, including research memoranda prepared by COUNSEL, unless they have been otherwise provided to the City Attorney's Office.

3. **Compensation.** CITY agrees to pay COUNSEL for services rendered hereunder as follows:

- A. Two Hundred Dollars (\$200.00) per hour for M. Graham.
- B. One Hundred and Seventy-Five Dollars (\$175.00) per hour for J. Nicoletti-Jones; W. McDonald and K. Patterson.
- C. One Hundred and Fifty Dollars (\$150.00) per hour for D. Rohwer
- D. One Hundred and Twenty-Five Dollars (\$125.00) per hour for Jr. Associates.

E. One Hundred Dollars (\$100.00) per hour for L. Fain; C. Vallarelli; C. Lysle.

F. Seventy-Five Dollars (\$75.00) per hour for D. Lewerke; K. Harper and M. Hoffner.

All services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. CITY shall not be billed for use of COUNSEL'S "runners", but may be billed for messenger service required when COUNSEL'S runner is not available. Total money paid under this contract **shall not exceed Two Hundred Thousand Dollars (\$200,000.00)**. Fees and expenses shall be billed on a monthly basis and paid by CITY within forty-five (45) days.

4. Travel. Approval for travel shall be obtained through the City Attorney's Office prior to departure. Travel time may be billed to CITY, with the exception of travel time to CITY to meet with CITY representatives or the City Council. "Reasonable expenses" means expenses not exceeding one hundred eighty five dollars (\$185.00) per night for hotel rooms, seventy-five dollars (\$75.00) per person per day for meals including gratuity, and for the rental charges of the most economical type of rental car available. Where possible, COUNSEL and consultants and experts and subcontractors shall stay at hotels that charge a government rate. When traveling by airplane, whenever possible, reduced fare tickets shall be purchased. Gasoline shall not be billed to CITY except when a rental car is used out-of-state.

5. Reimbursement for Expenses. All costs and other disbursements for outside services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. All copying charges shall be billed at no more than fifteen cents (\$.15) per page. To the extent practical, large photocopying tasks will be sent out to an outside copy service in an effort to further reduce photocopying costs. Outgoing faxes shall be billed for actual long distance charges incurred, not on a per page basis. On-line database retrieval charges (i.e. Lexis, Westlaw, CompuServe, Dialogue, etc.) shall be billed at actual cost.

6. Billing Procedures. In addition to the billing procedures set forth elsewhere in this Contract, COUNSEL shall follow these billing procedures:

A. "Unit billing" shall not be done. COUNSEL shall bill only for actual time spent on a task, and each task shall be itemized (e.g. tel. to opposing counsel (.2); extended tel. to Mr. Smith (.3); prepare motion to continue (.3).

B. Secretarial, word processing or other overtime shall not be billed (e.g., preparation of documents which are computerized or on a form, such as subpoenas, notices of deposition, independent medical examinations, medical authorizations, trial notices, uniform interrogatories, and requests to produce); only the actual time spent by the attorney reviewing, revising or drafting such documents shall be billed.

C. Whenever possible, attorneys shall minimize time spent consulting with one another and agree to use their best efforts to minimize the costs of the legal representation to CITY. Work on this matter billed by attorneys not listed must be approved by the City Attorney's Office in advance.

D. All consultants, experts and subcontractors engaged to provide services to COUNSEL in the performance of this agreement, and the use and extent of those services, shall be approved by the City Attorney's Office prior to them providing the services. Payment of their expenses will be subject to the same terms as paragraphs 4 and 5 above.

E. COUNSEL will submit monthly billings for services rendered and expenses incurred, which shall be paid by the City Attorney's Office. Each bill shall also contain, in addition to information required elsewhere in this Contract: 1) fees and costs incurred in the preceding month; 2) the cumulative total of fees and costs to date; 3) the City Attorney's Office contract number 2002-013 and; 4) the unbilled amount remaining on the contract. COUNSEL will use its best efforts to inform the City Attorney's Office eight weeks prior to COUNSEL billing the final fees and costs authorized under this contract. CITY will pay no fees incurred over and above the contract amount without prior authorization from CITY.

7. Maintenance of Records. In compliance with CITY'S standard procedure, all work performed in connection with this Contract shall be subject to audit. COUNSEL shall maintain all books, documents, papers, accounting records, and other evidence pertaining to time billed and to costs incurred on a particular lawsuit, and to make such materials available at their offices at all reasonable times during the Contract period and for at least three (3) years from the date of final payment for inspection by CITY or any authorized representatives of CITY, and copies thereof shall be furnished, if requested, at CITY'S expense.

8. Conflict of Interest. COUNSEL warrants and covenants that COUNSEL presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Contract a violation of any applicable local, state, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, COUNSEL shall promptly notify CITY of the existence of such conflict of interest, so that CITY may determine whether to terminate this Contract. The City Attorney is authorized to grant customary conflicts waivers to COUNSEL on behalf of the CITY, as are not adverse to the CITY's legal interests in his professional judgment. Otherwise, COUNSEL shall be free to dispose of such portion of their entire time, energy and skill as are not required to be devoted to CITY in such manner as they see fit and to such persons, firms or corporations as they deem advisable so long as no conflict of interest exists.

9. Reporting Requirements

A. Within sixty (60) days of receipt of a case, or at the time disclosure statements are first filed, whichever is sooner, COUNSEL shall provide CITY with an initial written evaluation containing the following:

1. A summary of the case's facts and issues;
2. An evaluation of the potential exposure;
3. An outline of the course of action COUNSEL intends to pursue in the case (e.g., names and/or categories of witnesses to be interviewed or deposed; experts to be retained; motions to be filed; etc.);
4. An estimate of the cost to defend the case through trial;

5. A cost/benefit analysis, including recommendations as to early settlement or offers of judgment; and,
6. The name of the attorney who will be primarily responsible for handling the case, and the names of others who will assist that person.

10. Additional Investigation. Whenever additional investigation is deemed desirable by COUNSEL and can be provided by use of non-attorney investigators, COUNSEL shall notify CITY through the City Attorney's Office of such need, and CITY may elect, at its option, to conduct such investigation. In this event, CITY shall be solely responsible for the accuracy of the facts or other information developed in response to such requests.

11. Termination. CITY may terminate this Contract upon giving ten (10) days written notice for convenience or cause. Any default by COUNSEL, if COUNSEL fails to comply with any of the conditions of this Contract, or services which provide unsatisfactory performance as judged by the Contract Administrator, and failure to provide CITY, upon request, reasonable assurance of future performance, shall be causes allowing CITY to terminate this Contract. In the event of termination for cause, CITY shall not be liable to COUNSEL for any amount, and COUNSEL shall be liable to CITY for any and all damages sustained by reason of the default which gave rise to the termination. Any notice of cancellation shall specify the particular lawsuit or lawsuits to which it applies, and any lawsuit not particularly specified shall continue to be handled by COUNSEL and, as to those, this Contract will continue in effect; provided, however, the right is retained by CITY to terminate services on any lawsuit by notifying COUNSEL in writing.

12. Notices. When notice or correspondence is required to be sent to CITY, it shall be sent to the Contract Administrator named below:

City Attorney's Office  
City of Scottsdale  
3939 Drinkwater Blvd.  
Scottsdale, Arizona 85251  
Attn: Donna M. Bronski

Should the Contract Administrator change, CITY will notify COUNSEL in writing.

13. Indemnification For Liability and Professional Liability

To the fullest extent permitted by law COUNSEL, its successors, assigns and guarantors, shall defend, indemnify and hold harmless CITY, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any negligent, or intentional actions, acts, errors, mistakes or omissions caused in whole or part by COUNSEL relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of COUNSEL'S and Subcontractor's employees.

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

14. Insurance Representations and Requirements

General: Counsel agrees to comply with all applicable City Ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of COUNSEL, shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to CITY. Failure to maintain insurance as specified may result in termination of this Contract at CITY'S option.

No Representation of Coverage Adequacy: By requiring insurance herein, CITY does not represent that coverage and limits will be adequate to protect COUNSEL. CITY reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify any insurance deficiency shall not relieve COUNSEL from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of subject contract is satisfactorily performed, completed and formally accepted by the CITY, unless specified otherwise in this Contract.

Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.

Use of Subcontractors: If any work under this agreement is subcontracted in any way, COUNSEL shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting CITY and COUNSEL. COUNSEL shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

Evidence of Insurance: Prior to commencing any work or services under this Contract, COUNSEL shall furnish CITY with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by COUNSEL'S insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions, and limits of coverage and such coverage and provisions are in full force and effect.

If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the cited policies expire during the life of this Contract, it shall be COUNSEL'S responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions:

1. CITY, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies: a) Commercial General Liability, b) Auto Liability and c) Excess Liability-Follow Form to underlying insurance as required.
2. COUNSEL'S insurance shall be primary insurance as respects performance of subject contract.
3. All policies, except Professional Liability insurance waive rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by COUNSEL under this contract.
4. Certificate shall cite 30-day advance notice of cancellation provision. If standard ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

#### Required Coverage

Commercial General Liability: COUNSEL shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$1,000,000 Products and Complete Operations Annual Aggregate, and a \$1,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

Professional Liability: If the Contract is the subject of any professional services or work, or if COUNSEL engages in any professional services or work adjunct or residual to performing the work under this Contract, COUNSEL shall maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by COUNSEL, or anyone employed by COUNSEL, or anyone for whose acts, mistakes, errors and omissions COUNSEL is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims.

In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the work or services, and COUNSEL shall be required to submit Certificates of Insurance evidencing proper coverage in effect as required above.

Vehicle Liability: COUNSEL shall maintain Business Automobile Liability insurance with a limit of \$500,000 each accident on COUNSEL'S owned, hired, and non-owned vehicles assigned to or used in the performance of the COUNSEL'S work or services under this Contract. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

Workers' Compensation Insurance: COUNSEL shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of COUNSEL'S employees engaged in the performance of work or services under this Contract and shall also maintain Employers Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

15. Choice of Law. This Contract shall be governed and interpreted according to the laws of the State of Arizona.

16. Whole Agreement. This Contract constitutes the entire understanding of the parties, and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

17. Amendments. Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract. Should there be a change in the Contract Administrator, however, CITY will only need to notify COUNSEL in writing.

18. Non-Assignment. Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the City Attorney.

19. Cancellation. CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract in any capacity, or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. § 38-511).

20. Independent Contractor Status. The services COUNSEL provides under the terms of this Contract to CITY are that of an independent contractor, not an employee. CITY will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099. Withholding of income tax is not deducted from contractual payments. As a result of this, COUNSEL may be subject to I.R.S. provisions for payment of estimated income tax.

Consult the local I.R.S. office for current information on estimated tax requirements. Failure to comply may subject COUNSEL to a penalty.

21. Severability. Should any part of this agreement be declared in a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

IN WITNESS WHEREOF, the City of Scottsdale, by its Mayor this \_\_\_\_ day of \_\_\_\_\_, 2003.

**City of Scottsdale, a  
municipal corporation**

By: \_\_\_\_\_  
Mary Manross, Mayor

**Graham & Associates, LTD**

By: Michael A. Graham  
Its: Pees

ATTEST:

\_\_\_\_\_  
Sonia Robertson, City Clerk

APPROVED AS TO FORM:

David A. Pennartz  
David A. Pennartz, City Attorney

**Note to Attorneys: Remember to send along a copy of your Certificate of Insurance with the Contract for Legal Services.**



# CITY COUNCIL REPORT



MEETING DATE: 01/06/2003    ITEM NO. 4    GOAL: Transportation

## **SUBJECT**

**Exchange of surplus property for property acquired for the Marshall Way Realignment and relocation benefits.**

## **REQUEST**

Adopt Resolution No. 6209 authorizing Conveyance and Settlement Agreement No. 2002-150-COS between the City of Scottsdale and Thomas Gale and Anne Gale, dba Wiseman and Gale Gallery ("Gales").

### **Related Policies, References:**

On September 15, 1997 the City Council Adopted Resolution No. 4871 authorizing the acquisition of real property under the threat of eminent domain for the widening of Indian School Road and the realignment of Marshall Way.

## **BACKGROUND**

As part of the Marshall Way realignment the City offered to buy a 672 S.F. triangle of land on the southwest corner of the Gales property at 4015 N. Marshall Way for \$10,607.00 for needed Right of Way (ROW). The transaction was never completed.

In addition, prior to the realignment of Marshall Way, the Gales leased space in a building located at 7064 E. 1<sup>st</sup> Avenue, which was later demolished for the realignment project. The Gales relocated from the building at their cost for \$9,770.00. The City's relocation agent provided a relocation determination that they were eligible for the reimbursement of moving costs, but a relocation claim was never finalized.

On January 2, 2002 the Gales sent a letter (Attachment No. 3) to the City Attorney that claimed the following damages to their business as a result of the Marshall Way realignment:

- Loss of 6 parking spaces
- Loss of access to Marshall Way
- Loss of Marshall Way address
- The narrow alley resulting from the project impaired delivery truck access
- City owes them their relocation benefits
- City owes them for the property

Attachment No. 4 is an aerial showing the area prior to the Marshall Way realignment and Attachment No. 5 is an aerial showing the area after the realignment.

## **ANALYSIS & ASSESSMENT**

The Gales have proposed the following solution. The City will trade them an uneconomic and substantially unbuildable remnant property (4,050 S.F, encumbered with utilities) created by the realignment of Marshall Way located

Action Taken \_\_\_\_\_

along the east side of Marshall Way and north of First Avenue (Attachment No. 5) in exchange for a waiver from the Gales for the relocation benefits amount (\$9,770.00 plus interest) and any other claims against the City and conveyance of the ROW parcel that the City previously offered to buy (\$10,607.00 plus interest). The Gales' goal is to develop and landscape the remnant property into a sculpture garden and create 6 parking spaces. Attachment No. 6 is their proposed site plan.

**Contract process and terms.**

As a result the City Attorney Office drafted the proposed agreement. The terms and conditions include:

Gales convey their corner parcel to the City within 30 days of the agreement.

Gales release all claims against the City

City conveys the remnant parcel, subject to limitations on uses, to the Gales within 30 days of the agreement. The Gales may develop the land in conformance with the site plan, subject to development review procedures. The site plan allows them to enclose the property, construct six parking spaces and landscape the property in a manner that will not impair the use of existing easements. No other permanent improvements will be allowed on the property, but moveable items such as statues, fountains and other heavy art objects that are not affixed to the property and that do not damage the underground utilities may be located on the property.

**Significant issues to be addressed.**

This agreement will result in a resolution of issues regarding the acquisition of real property by the City, the payment of relocation costs, and the impact of the realignment of Marshall Way and will eliminate the potential costs of future litigation.

**Community involvement.**

There have not been any public meetings associated with this proposal, but should this agreement be approved by the City Council, any proposed improvements on the property would be required to go through the Development Review Board process.

**RESOURCE IMPACTS**

There will be no cost to the City as a result of this agreement.

**OPTIONS & STAFF  
RECOMMENDATION**

**Description of Option A:**

Adopt Resolution 6209 Authorizing Agreement No. 2002-150-COS.

**Description of Option B:**

Do not authorize the conveyance and settlement agreement and pay the Gales for the land, relocation benefits, damages, and interest that may be due them. This option will not solve the problems the Gales claim were created by the realignment of Marshall Way and could result in future litigation. In addition this option will not result in the improvement of a vacant, uneconomic dirt lot in the downtown.

**Recommended Approach:**

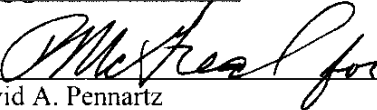
Adopt Resolution No. 6209 Authorizing Agreement No. 2002-150-COS for the trade of City land. This approach will resolve outstanding issues related to the Marshall Way realignment and allow the Gales to improve a vacant dirt lot into an

attractive sculpture garden and provide six parking spaces.


**RESPONSIBLE DEPT(S)** City Attorney's Office

**STAFF CONTACT(S)** Patrick McGreal, Assistant City Attorney, 480-312-2659,  
[pmcgreal@ci.scottsdale.az.us](mailto:pmcgreal@ci.scottsdale.az.us)  
Ron King, Asset Management Coordinator, 480-312-7042,  
[rking@ci.scottsdale.az.us](mailto:rking@ci.scottsdale.az.us)

**APPROVED BY**

  
\_\_\_\_\_  
David A. Pennartz  
City Attorney  
[dpennartz@scottsdale.az.us](mailto:dpennartz@scottsdale.az.us)

12/20/02  
Date

  
\_\_\_\_\_  
for Jan Dolan  
City Manager  
[jdolan@ci.scottsdale.az.us](mailto:jdolan@ci.scottsdale.az.us)

12/23/02  
Date

**ATTACHMENTS**

1. Resolution No. 6029
2. Agreement No. 2002-150-COS
3. Gales Letter to City Attorney
4. Aerial Photo of Marshall Way Prior to Realignment
5. Aerial Photo of Marshal Way After Realignment



RESOLUTION NO. 6209

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO ENTER INTO A CONVEYANCE AND SETTLEMENT AGREEMENT, CONTRACT NO. 2002-150-COS, TO RESOLVE ALL CLAIMS RELATED TO THE ACQUISITION OF REAL PROPERTY FROM, THE PAYMENT OF RELOCATION EXPENSES TO, AND ANY AND ALL DAMAGES RELATED TO THE MARSHALL WAY REALIGNMENT PROJECT CLAIMED BY THOMAS GALE AND ANNE GALE.

WHEREAS, THE City of Scottsdale desires to acquire title to certain real property owned by Thomas Gale and Anne Gale (the "Gales") to incorporate into the Marshall Way Realignment Project; and

WHEREAS, THE City of Scottsdale desires to reimburse the Gales for certain relocation expenses; and

WHEREAS, THE City of Scottsdale owns a remnant parcel adjacent to real property owned by the Gales (the "Remnant Parcel"); and

WHEREAS, THE Gales desire to obtain title to the remnant parcel for limited parking, display, and landscaping uses; and

WHEREAS, the City and the Gales have agreed to resolve all disputed issues and compromise all claims to accomplish their mutual goals and desires; and

WHEREAS, it is in the best interest of the City to agree to the terms of settlement;

NOW, THEREFORE, BE IT RESOLVED, by the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. That the City Council authorizes the Mayor to enter into the Conveyance and Settlement Agreement, Contract No. 2002-150-COS.

Section 2. That the Mayor is hereby authorized to execute any and all additional documents as may be necessary to accomplish the purpose of the Agreement.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 6th day of January 2003.

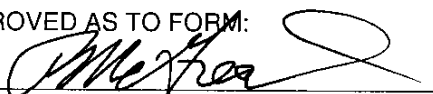
ATTEST:

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Sonia Robertson  
City Clerk

By: \_\_\_\_\_  
Mary Manross  
Mayor

APPROVED AS TO FORM:

By:   
Patrick McGreal, Assistant City Attorney



## **CONVEYANCE AND SETTLEMENT AGREEMENT**

### **Agreement No. 2002-150-COS**

This Conveyance and Settlement Agreement ("Agreement") is entered into August 2002, by and between the City of Scottsdale, a municipal corporation, ("City") and Thomas Gale and Anne Gale, husband and wife dba The Gale Collection, Inc. (collectively "the Gales")

#### **Recitals**

A. The Gales are the owners of real property located at the northeast corner of First Avenue and Marshall Way in the City of Scottsdale (the "Gale Property").

B. The City seeks to acquire title to certain real property in which the Gales claim an interest (the "Corner Property"). The Corner Property is generally located on the southwest corner of the Gale Property and is more fully described in Exhibit A attached hereto and incorporated herein.

C. The Property is to be acquired by the City as right of way for the purpose of incorporating it into the Marshall Way realignment project (the "Project").

D. The City took possession of the Corner Property to complete the Project.

E. The Project displaced the Gales from 7064 E. first Avenue and required the Gales to relocate portions of their business in 1998. At the time, the City estimated that the Gales were entitled to \$9,770.00 in relocation assistance.

F. The Project created a triangular remnant of real property located directly west of the Gale Property, adjacent to the eastern boundary of the realigned Marshall Way, adjacent to the western boundary of the Gale Property, and more fully described in Exhibit B attached hereto (the "Remnant Property").

F. The City and the Gales desire to conclude the City's acquisition of the Corner Property by exchanging the Corner Property right of way for the right of way within the Remnant Property and by resolving all claims and issues that may exist between them with respect to the City's acquisition of the Corner Property, the Gales' relocation assistance payment, and the Project.

### **AGREEMENTS**

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, including the payment and release provisions of this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Gales agree as follows:

1. **Incorporation:** The recitals set forth in paragraphs "A" through "F", inclusive, of this Agreement, are incorporated herein by reference and constitute representations of the party or parties to whom each paragraph refers.

2. **Definitions:** As used in this Agreement, including the recitals, the term "Gales", refers Thomas Gale and Anne Gale, and their heirs, assigns and successors in interest. All obligations and undertakings of the Gales hereunder

shall be joint and several obligations and undertakings of Thomas Gale, Anne Gale, and their heirs, assigns and successors in interest.

3. **Condition Precedent to Agreement:** The approval of this Agreement by the City Council is an express condition precedent to the effectiveness of this Agreement.

4. **Conveyance of the Corner Parcel:** Within thirty (30) days of the execution of this Agreement by all parties and satisfaction of the condition precedent to the effectiveness of this Agreement set forth in paragraph 3 above, the Gales shall deliver to the City a warranty deed to the Corner Parcel in substantially the form attached hereto as Exhibit C the ("Gale Deed").

5. **Conveyance of the Remnant Property** Within thirty (30) days of the execution of this Agreement by all parties and satisfaction of the condition precedent to the effectiveness of this Agreement set forth in paragraph 3 above, the City shall deliver to the Gales a warranty deed to the Remnant Property in substantially the form attached hereto as Exhibit D (the "City Deed"). Title to the Remnant Parcel shall be subject to the covenants and restrictions set forth therein and, except as permitted by the City Deed, the parties intend that the Remnant Property shall remain unbuildable.

6. **Release of all Claims:** The Gales, and each of them, on behalf of themselves, their spouse, agents, successors in interest (collectively the "Releasing Parties") do hereby remise, release and forever discharge the City, its agents, employees, contractors, and attorneys (collectively the "Released Parties") from any and all claims demands, or causes of action, of any kind or

nature whatsoever, known or unknown, accrued or not yet accrued, which any of the Releasing Parties may have against any one or more of the Released Parties which arises from or is, in any way, related to:

- a) The Marshall Way Realignment Project;
- b) Construction of the Marshall Way Realignment Project;
- c) The use of and construction on the Corner Parcel by the City;
- d) The Possession by the City of the Property and of any other real property to which the Gales may claim an interest; and
- e) Relocation assistance related to the Marshall Way realignment project.

7. **Representations, Warranties and Covenants of the City.** The City warrants, represents and covenants (with the understanding that Seller is relying on these warranties, representations and covenants) that:

A. **Full Power and Authority; Binding Effect of Closing Documents.** The City has full power and authority to enter into and to perform this Agreement and to cause the City Deed to be executed, delivered and performed by the City in accordance with their respective terms. The individuals executing this Agreement and the City Deed on behalf of the City are, or will be, authorized and empowered to execute this Agreement and the City Deed on behalf of the City and, upon their executing this Agreement and the City Deed on behalf of the City, this Agreement and the City Deed shall be legal, valid and binding obligations of the City and shall be enforceable upon the City in accordance with their respective terms.

B. Materiality; Indemnification. The provisions of this Section 7 are material and included as a material portion of the consideration given by the City to the Gales in exchange for the Gales' performance under this Agreement. The City does hereby agree to, and shall, pay, protect, defend, and indemnify the Gales and hold them harmless for, from, of and against any loss, damage, liability and expense, together with all court and arbitration costs and any attorneys' fees, which the Gales may incur by reason of any inaccuracy in or breach of any of the City's representations, warranties and covenants contained in this Agreement. All representations, warranties and indemnifications contained in this Section 7 by the City shall survive execution and delivery of this agreement and the Gale Deed and shall be Survival Items.

C. The Gales may maintain the Corner Parcel, and provide landscaping and other ornamentation, including the rearing horse artwork now in place, in excess of the City's landscaping and maintenance standards.

F. Purpose for Acquisition. This acquisition is done in lieu of the exercise of the City's power of eminent domain for the purpose of acquiring right of way necessary to permit the realignment of Marshall Way.

8. **Representations, Warranties and Covenants of the Gales:** The Gales warrant, represent and covenant (with the understanding that the City is relying on these warranties, representations and covenants) that:

A. Full Power and Authority; Binding Effect of Closing Documents. The Gales have full power and authority to enter into and to perform this Agreement and to execute the Gale Deed in accordance with their respective

terms. Upon their executing this Agreement and the Gale Deed, and acceptance of the City Deed, this Agreement, the Gale Deed, and the covenants and conditions and restrictions of the City Deed shall be legal, valid and binding obligations of the Gales and shall be enforceable upon the Gales in accordance with their respective terms.

B. Mechanic's Liens. No work has been performed or is in progress at the Property and no materials have been furnished to the and real property that is the subject of this agreement, which might give rise to mechanic's, materialman's or other liens against any part of such real property.

9. Recordation of this Agreement: The City shall have the right to record this Agreement in the official records of the Maricopa County Recorder. Upon request, the Gales shall execute a Memorandum of the Agreement, which Memorandum may also be recorded by the City, in its discretion.

10. No Assignment: Neither the City nor the Gales shall transfer, convey, or assign their rights or obligations under this Agreement without the prior express written consent of all parties to this Agreement, which consent may be withheld in the sole and absolute discretion of the parties. Any assignment attempted in violation of the provisions of this paragraph 8 shall be null and void and shall vest no rights in the purported assignee or transferee.

11. Attorneys' Fees: In the event legal action is brought by any party to this Agreement to seek interpretation or construction of any term or provision of this Agreement, to enforce the terms of this Agreement, to collect any monies

due, or to obtain any money damages or equitable relief for breach, the prevailing party in such action shall be entitled to recover, in addition to any other available remedy, reimbursement for reasonable attorneys' fees, court costs, expert witness fees, and other related expenses.

12. **Successors and Assigns:** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors in interest and permitted assigns.

13. **Integration:** This Agreement represents the entire agreement of the parties with respect to the subject matter and all agreements, oral or written, entered into prior to this Agreement are revoked and superceded by this Agreement. No representations, warranties, inducements, or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements. This Agreement may not be changed, modified, or rescinded, except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no force or effect.

14. **Severability:** If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect.

15. **Governing Law:** This agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to choice of law principles). Any action brought to enforce or construe this Agreement or any

term hereof shall be commenced and maintain in the Superior Court of the State of Arizona in and for the County of Maricopa.

16. **Construction/Interpretation:** The captions and paragraph headings used in this Agreement are for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement. When used herein, the terms, "include" or "including" shall mean without limitation by reason of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require. The term "person" shall include an individual, corporation, partnership, trust, estate, or any other entity. If the last day of any time period stated herein shall fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona.

17. **Notices:** All notices required or permitted to be given under this Agreement shall be in writing and sent by certified or registered mail, return receipt requested, by personal delivery, or by a nationally recognized overnight courier service to the address indicated below:

Gales:

Thomas and Anne Gale  
6640 E. Exeter  
Scottsdale, AZ 85251

City of Scottsdale

David Pennartz, City Attorney  
3939 Drinkwater Blvd.  
Scottsdale, AZ 85251

19. **Third Party Beneficiaries:** Each of the Released parties identified in Paragraph 6 of this Agreement is expressly designated as a third party beneficiary of this Agreement.

20. **Counterparts:** This Agreement may be signed in counterparts and transmitted by facsimile with hard copies to follow.

"Gales"

  
Thomas Gale

  
Anne Gale

"City"

City of Scottsdale

By: \_\_\_\_\_  
Mary Manross, Mayor

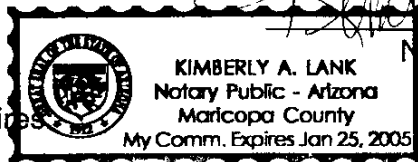
Attest:

\_\_\_\_\_  
Clerk

STATE OF ARIZONA     )  
                                      )  
COUNTY OF MARICOPA )

SS:

The foregoing instrument was acknowledged before me, the undersigned  
notary public on the 6th of December, 2002, by Thomas Gale



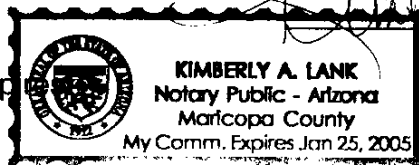
Kimberly A. Lank  
Notary Public

My Commission Expires:

STATE OF ARIZONA     )  
                                      )  
COUNTY OF MARICOPA )

SS:

The foregoing instrument was acknowledged before me, the undersigned  
notary public on the 6th of December, 2002, by Anne Gale



Kimberly A. Lank  
Notary Public

My Commission Expires:

STATE OF ARIZONA     )  
                                      )  
COUNTY OF MARICOPA )

SS:

The foregoing instrument was acknowledged before me, the undersigned  
notary public on the \_\_\_\_ of \_\_\_\_\_, 2002, by Mary Manross.

\_\_\_\_\_  
Notary Public

My Commission Expires:

## LEGAL DESCRIPTION

### Lot 24, Block 2 and Marshall Way, Scottsdale.

Portions of Lot 24, Block 2 and Marshall Way, a roadway having a width of 50 feet, as shown on the plat of SCOTTSDALE as recorded in Book 6 of Maps, Page 26, records of Maricopa County, Arizona, situated in Section 27, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at a point on the East line of said Marshall Way which lies North  $00^{\circ}09'12''$  East, 30.99 feet from the southwest corner of Lot 13, Block 1 of said SCOTTSDALE, said point also being the beginning of a non-tangent curve concave to the southwest, the center of which lies South  $67^{\circ}53'12''$  West 123.80 feet;

thence departing said East line northwesterly along said curve through a central angle of  $34^{\circ}22'27''$  a distance of 74.26 feet;

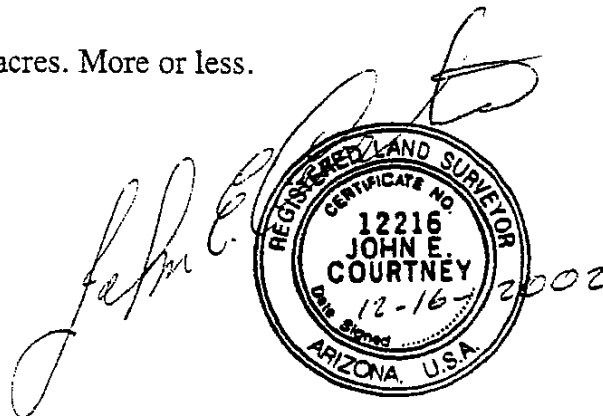
thence North  $56^{\circ}29'17''$  West 58.59 feet to the beginning of a non-tangent curve concave to the northeast, the center of which lies South  $51^{\circ}39'11''$  East 17.50 feet;

thence northeasterly along said curve through a central angle of  $33^{\circ}24'05''$  a distance of 10.20 feet to a point which lies 6.00 feet South of the North line of said Lot 24;

thence North  $89^{\circ}08'17''$  East parallel with and 6.00 feet South of said North line and its prolongation 87.21 feet to a point on the East line of said Marshall Way which lies 6.00 feet South of the northwest corner of Lot 13, Block 1, of said SCOTTSDALE;

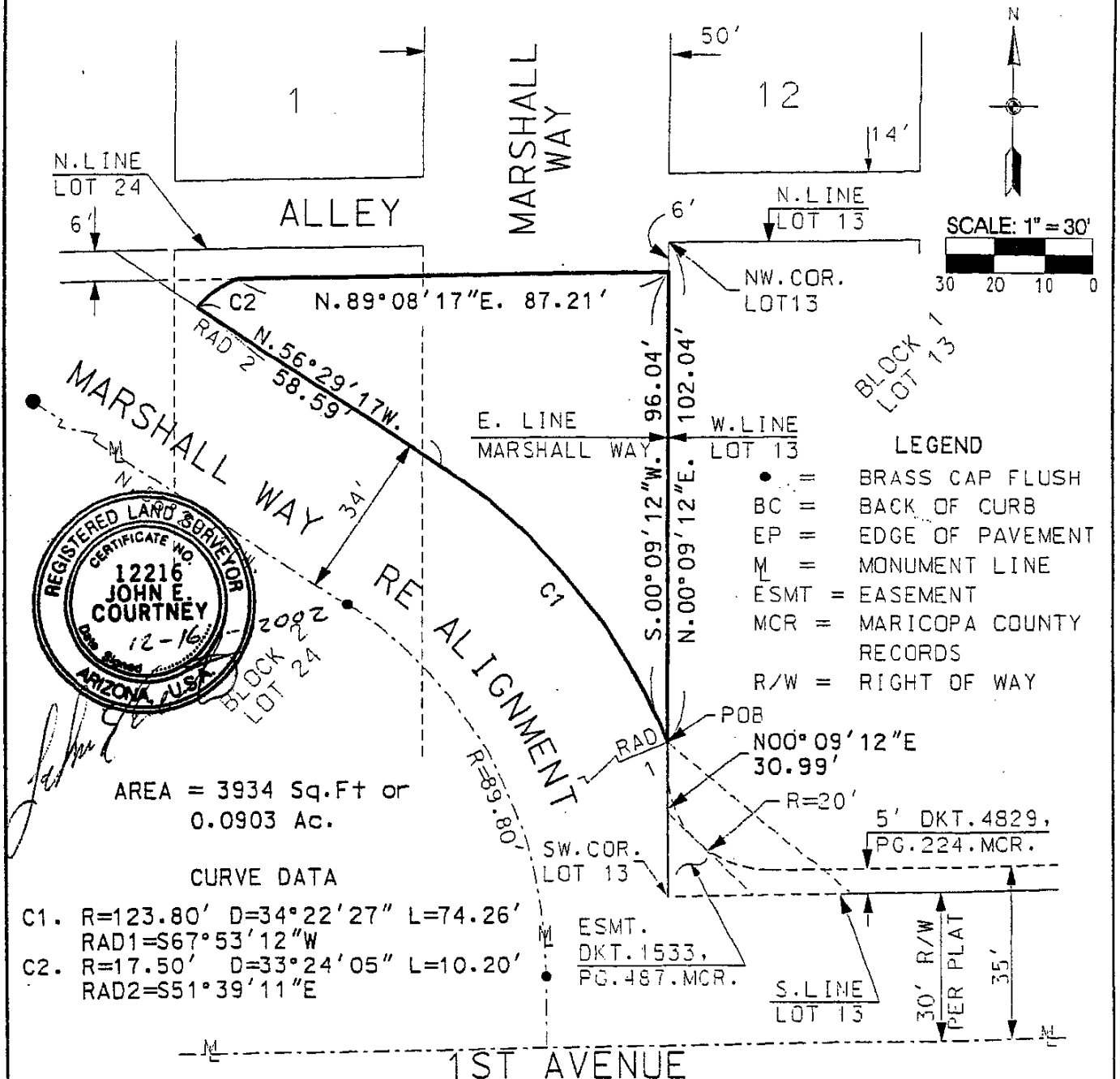
thence South  $00^{\circ}09'12''$  West along said East line 96.04 feet to the POINT OF BEGINNING.

Containing 3934 square feet. or 0.0903 acres. More or less.



# EXHIBIT

PORTIONS OF LOT 24, BLOCK 2 & MARSHALL WAY, SCOTTSDALE, ACCORDING TO  
BOOK 6 OF MAPS PAGE 26. MCR, SEC.27, T.2 N., R.4 E. OF THE G. & S.R.B. & M.,  
MARICOPA COUNTY, ARIZONA.



PROJECT NAME  
MARSHALL WAY &  
1ST AVENUE

INSPECTION AND LAND SURVEY  
SERVICES DEPARTMENT  
LAND SURVEY UNIT

PROJECT # 03071 SURVEYED BY BR DRAWN BY PN DATE 12/10/02 SHEET 1 OF 1

**EXHIBIT C**  
**THE GALE DEED**

**EXHIBIT C**  
**(4 pages)**

---



WHEN RECORDED RETURN TO:

Lila Madden (Ron King, Original)  
One Stop Shop Records  
City of Scottsdale  
7447 E. Indian School Road, Suite 100  
Scottsdale, AZ. 85251

EXEMPT FROM AFFIDAVIT RE:

ARS 42-1614 A-3

**SPECIAL WARRANTY DEED**

For valuable consideration received, Thomas Gale and Anne Gale (Grantors), do hereby convey to the City of Scottsdale, a municipal corporation ("Grantee"), all of Grantors' right, title and interest in and to the following described real property (the "Property") thereon and all of Grantor's interest in any right and privileges appurtenant thereto. The Property is the parcel described on Exhibit "A" attached hereto.

SUBJECT TO: All covenants, conditions, restrictions, reservations, easements, declarations, encumbrances, liens, obligations and liabilities or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; and the applicable zoning and use regulations of the municipality, county, state, or the United States affecting the property.

AND GRANTORS hereby bind themselves and their successors to warrant and defend the title against all of the acts of Grantors and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantors have caused this Special Warranty Deed to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2002

GRANTORS:

\_\_\_\_\_  
Thomas Gale

\_\_\_\_\_  
Anne Gale

STATE OF ARIZONA       )  
                                      )  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by Thomas Gale.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF ARIZONA     )  
                                      )  
County of Maricopa     )

The foregoing instrument was acknowledged before me this        day of        ,  
2002, by Anne Gale.

My Commission Expires: \_\_\_\_\_  
Notary Public \_\_\_\_\_

**EXHIBIT D**  
**THE CITY DEED**

**EXHIBIT D**  
**(6 pages)**

---



WHEN RECORDED RETURN TO:  
Lila Madden (Ron King, Original)  
One Stop Shop Records  
City of Scottsdale  
7447 E. Indian School Road, Suite 100  
Scottsdale, AZ. 85251

EXEMPT FROM AFFIDAVIT RE:  
ARS 42-1614 A-3

### **SPECIAL WARRANTY DEED**

For valuable consideration received, the City of Scottsdale, a municipal corporation, ("Grantor"), does hereby convey to Thomas Gale and Anne Gales ("Grantee"), all of Grantor's right, title and interest in and to the following described real property (the "Property") thereon and all of Grantor's interest in any right and privileges appurtenant thereto. The Property is the parcel described on Exhibit "A" attached hereto.

SUBJECT TO: All covenants, conditions, restrictions, reservations, easements, declarations, encumbrances, liens, obligations and liabilities or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; and the applicable zoning and use regulations of the municipality, county, state, or the United States affecting the property.

GRANTOR and GRANTEES hereby covenant and agree to restrict the uses of the Property as follows:

1. Grantees may improve the property in general conformance with the conceptual site plan attached hereto as Exhibit B. Specific permitted elements of the site plan are as follows:
2. Grantees may construct a fence to enclose the Property and a seat wall, retention area and landscaping screen as conceptually shown on Exhibit B. Design and construction of all improvements shall be subject to the City's usual approval and permit processes and procedures;
3. Grantees may construct a parking area upon the northern portion of the Property to provide parking spaces for no more than eight (8) cars, including one space for a handicapped vehicle. Design and construction of the parking area shall be subject to the City's usual approval and permit processes and procedures;
4. Grantees may landscape property in any manner that will not impair the use of all easements encumbering the Property;
5. Except as set forth above, no other permanent improvements shall be constructed on the property. Statues, removeable fountains, and other heavy art objects and artifacts not affixed to the Property shall not be considered permanent within the meaning of this paragraph. Notwithstanding the preceding, no object shall be placed on the Property in a manner the will damage the utilities underlying the water, cable, and sewer easements.

GRANTOR hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2002

GRANTOR

\_\_\_\_\_  
Mary Manross, Mayor

Attest:

\_\_\_\_\_  
Clerk

GRANTEES:

\_\_\_\_\_  
Thomas Gale

\_\_\_\_\_  
Anne Gale

STATE OF ARIZONA        )  
                                      )  
COUNTY OF MARICOPA    )       ss:

The foregoing instrument was acknowledged before me, the undersigned notary public on the \_\_\_\_\_ of \_\_\_\_\_ 2002, by Mary Manross.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ARIZONA     )  
                                      )  
County of Maricopa     )

          The foregoing instrument was acknowledged before me this        day of        ,  
2002, by Thomas Gale.

My Commission Expires: \_\_\_\_\_  
Notary Public \_\_\_\_\_

STATE OF ARIZONA     )  
                                      )  
County of Maricopa     )

          The foregoing instrument was acknowledged before me this        day of        ,  
2002, by Anne Gale.

My Commission Expires: \_\_\_\_\_  
Notary Public \_\_\_\_\_



## LEGAL DESCRIPTION

### PARCEL 2

#### Lot 24, Block 2 and Marshall Way, Scottsdale.

Portions of Lot 24, Block 2 and Marshall Way, a roadway having a width of 50 feet, as shown on the plat of SCOTTSDALE as recorded in Book 6 of Maps, Page 26, records of Maricopa County, Arizona, situated in Section 27, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at a point on the East line of said Marshall Way which lies North  $00^{\circ}09'12''$  East, 30.99 feet from the southwest corner of Lot 13, Block 1 of said SCOTTSDALE, said point also being the beginning of a non-tangent curve concave to the southwest, the center of which lies South  $67^{\circ}53'12''$  West 123.80 feet;

thence departing said East line northwesterly along said curve through a central angle of  $34^{\circ}22'27''$  a distance of 74.26 feet;

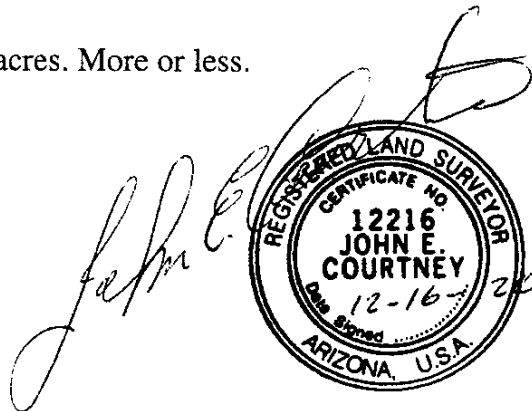

thence North  $56^{\circ}29'17''$  West 58.59 feet to the beginning of a non-tangent curve concave to the northeast, the center of which lies South  $51^{\circ}39'11''$  East 17.50 feet;

thence northeasterly along said curve through a central angle of  $33^{\circ}24'05''$  a distance of 10.20 feet to a point which lies 6.00 feet South of the North line of said Lot 24;

thence North  $89^{\circ}08'17''$  East parallel with and 6.00 feet South of said North line and its prolongation 87.21 feet to a point on the East line of said Marshall Way which lies 6.00 feet South of the northwest corner of Lot 13, Block 1, of said SCOTTSDALE;

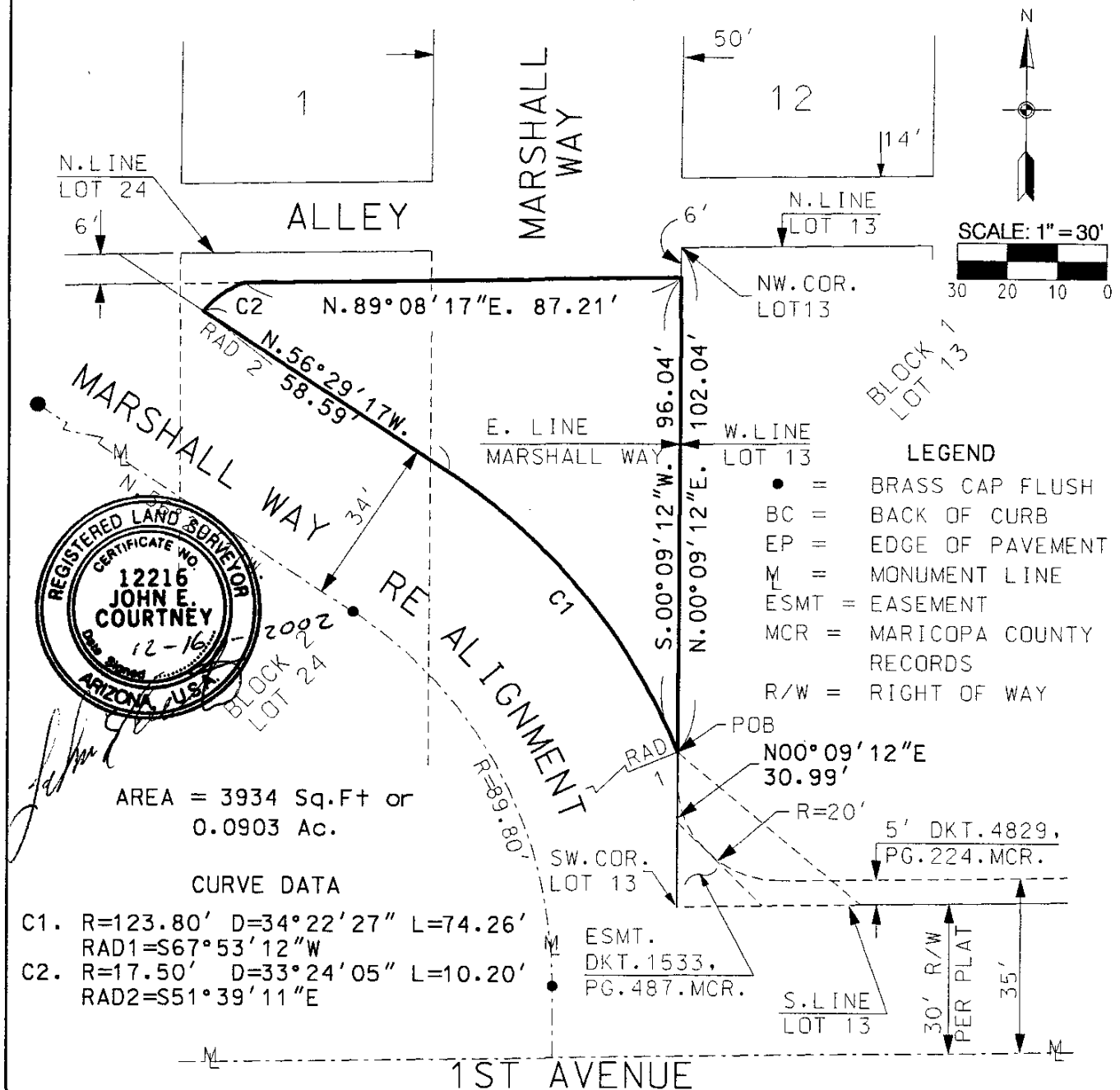
thence South  $00^{\circ}09'12''$  West along said East line 96.04 feet to the POINT OF BEGINNING.

Containing 3934 square feet. or 0.0903 acres. More or less.

# EXHIBIT

PORTIONS OF LOT 24, BLOCK 2 & MARSHALL WAY, SCOTTSDALE, ACCORDING TO BOOK 6 OF MAPS PAGE 26. MCR, SEC.27, T.2 N., R.4 E. OF THE G. & S.R.B. & M., MARICOPA COUNTY, ARIZONA.



PROJECT NAME

MARSHALL WAY &  
1ST AVENUE

INSPECTION AND LAND SURVEY  
SERVICES DEPARTMENT  
LAND SURVEY UNIT

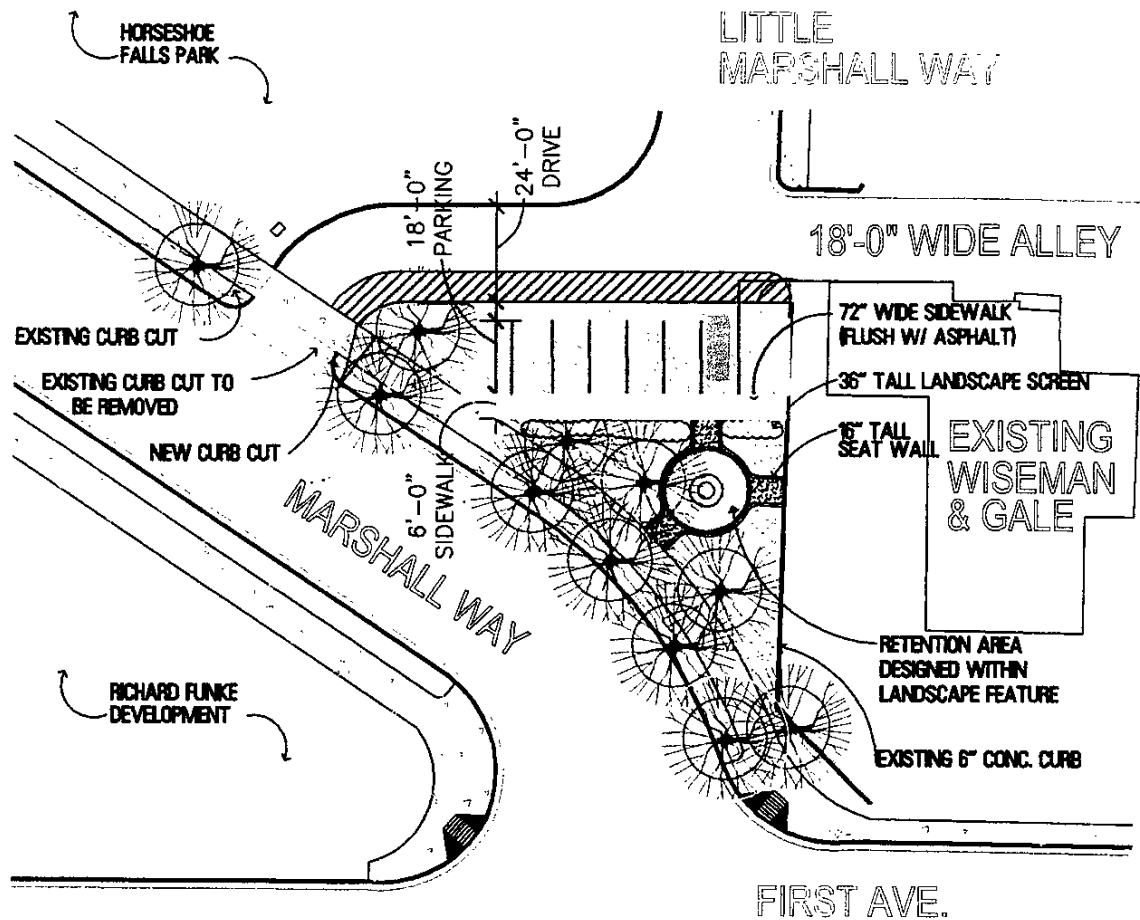
PROJECT # 02071

SURVEYED BY BR

DRAWN BY PN

DATE 12/10/02

SHEET 1 OF 1



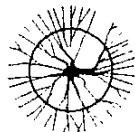
6

## PROPOSED SITE DEVELOPMENT

SCALE: 1"=40'-0"



### SYMBOLS LEGEND



— CHILIAN MESQUITE



— NEW ASPHALT



— EXISTING EXPOSED AGGREGATE



— LANDSCAPE/WATER FEATURE

— PROPOSED WIDEN OF ALLEY BY CITY OF SCOTTSDALE. (THIS AREA TO REMAIN CITY PROPERTY)





# CITY COUNCIL REPORT



MEETING DATE: 01/06/2003    ITEM No. 5    GOAL: Transportation

<b>SUBJECT</b>	<b>Engineering Services Contract for design of Improvements to Camelback Road from 64<sup>th</sup> to 68<sup>th</sup> Street</b>
<b>REQUEST</b>	AUTHORIZE Engineering Services Contract No. 2003-001-COS with Tri-Core Engineering in the amount of \$ 182,179.00 for the design of Camelback Road Improvements from 64 <sup>th</sup> to 68 <sup>th</sup> Streets.
<b>BACKGROUND</b>	<p>This engineering services design contract will finalize the design concept, and provide plans, specifications and final construction documents for the reconstruction and widening of Camelback Road between 64<sup>th</sup> and 68<sup>th</sup> Street.</p> <p>This CIP project was budgeted to widen and reconstruct this portion of Camelback Road to the City's western boundary with the City of Phoenix. Improvements to Camelback Road will serve as a gateway into downtown Scottsdale. Improvements include the addition of two travel lanes, undergrounding overhead 12 kV power lines along the north side, landscaped medians, full pavement reconstruction, sidewalks, bus bays and right turn deceleration lanes. These improvements are planned to increase traffic circulation capacity and pedestrian safety.</p>
<b>ANALYSIS &amp; ASSESSMENT</b>	<p>A Design Concept Report (DCR) will be prepared for this project. The DCR will serve as the basis for final design.</p> <p>On September 27, 2002, Capital Project Management staff solicited proposals for a design contract from 53 consultants. Ten proposals were received on October 28, 2002. All proposals were thoroughly evaluated by a panel of four city staff members. Based on the responses, Tri-Core Engineering was unanimously selected by all members of the review panel as the most qualified firm to prepare this design (Evaluation Matrix attached). The Purchasing Director confirms that the procurement procedures provided by the City Code have been followed. The C.I.P. Coordinator concurs that funds are available to authorize this contract.</p> <p><b>Significant issues to be addressed:</b></p> <p>The details of the transition in pavement width from four lanes to six lanes at the Phoenix/Scottsdale border will be established through the initial design process. Another issue will involve the utility coordination required to accomplish the undergrounding of the existing 12 kV electrical power line on the north side.</p>

Action Taken \_\_\_\_\_

**Community involvement:**

Meetings will be held with property owners and interested parties along the corridor during the Design Concept Report preparation in order to gain input and agreement for the final design of the project.

**RESOURCE IMPACTS****Available funding:**

Funds for this contract are available in CIP account S0301, Camelback Road – 64<sup>th</sup> to 68<sup>th</sup> Streets.

**Future budget implications:**

An improved Camelback Road will be less costly to maintain in the years immediately following construction.

**Maintenance requirements:**

Camelback Road is already included in the inventory of streets that the City maintains.

**OPTIONS & STAFF  
RECOMMENDATION****Description of Option A:**

Award this engineering contract to Tri-Core Engineering and proceed with the design.

**Description of Option B:**

Do not award this contract. Delay design services for this area of Camelback Road. Traffic in this corridor will continue to increase with the recent development on the south side of Camelback Road.

**Recommended approach:**

Award this design contract in order to move forward with this project.

**Proposed Next Steps:**

If this contract is awarded, design services will begin immediately and be completed by the end of 2003. It is anticipated that construction of the project will occur during the summer and fall of 2004.


**RESPONSIBLE DEPT(S)**

Municipal Services, Capital Project Management

**STAFF CONTACT(S)**

Dan Walsh, Project Manager, (480) 312-5248, [dwalsh@ci.scottsdale.az.us](mailto:dwalsh@ci.scottsdale.az.us)

**APPROVED BY**

  
Al Dreska  
Municipal Services General Manager  
[adreska@ci.scottsdale.az.us](mailto:adreska@ci.scottsdale.az.us) (480) 312-5555

12/20/02  
Date

  
Roger Klingler  
[rklingler@ci.scottsdale.az.us](mailto:rklingler@ci.scottsdale.az.us) (480) 312-5830

12/23/02  
Date

**ATTACHMENTS**

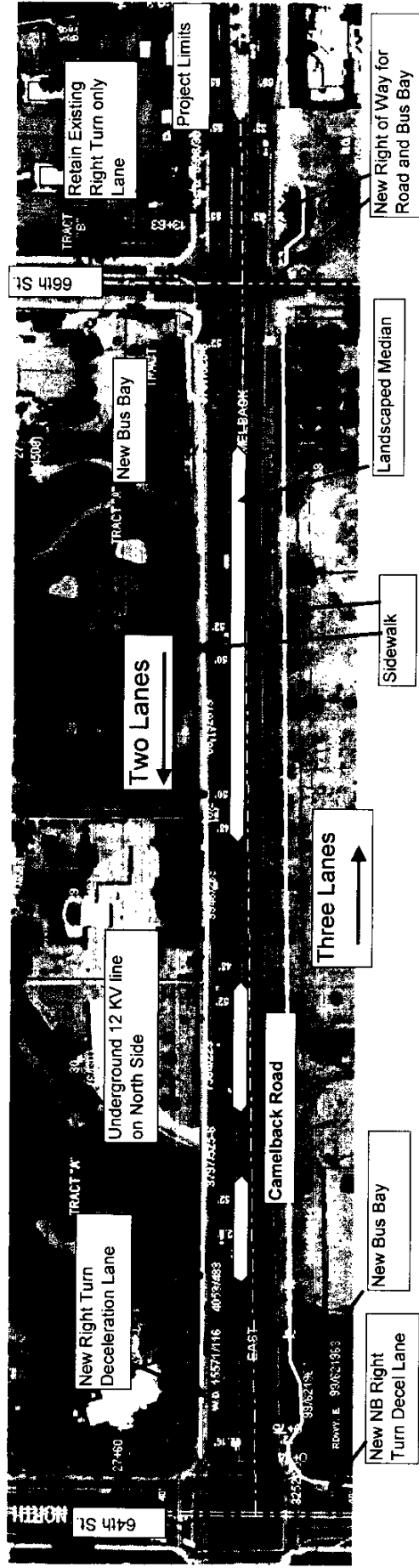
1. Location Map
2. Engineering Services Contract No. 2003-001-COS
3. Proposal Evaluation Summary

**Camelback Road Improvements 64th to 68th Street Scores SOQs (November 2002)**

	Total Points per Reviewer				Total	Average
	Reviewer 1	Reviewer 2	Reviewer 3	Reviewer 4		
1. Overall Project	32	30	20	25	107	26.75
2. Project Description	30	30	20	25	105	26.25
3. Project Location	32	25	18	25	100	25
4. Project Objectives	33	35	30	30	128	32
5. Project Justification	35	30	20	28	113	28.25
6. Project Impact	30	25	20	15	90	22.5
7. Project Benefits	33	25	20	20	98	24.5
8. Project Risks	33	30	25	20	108	27
9. Project Costs	30	30	25	28	113	28.25
10. Project Management	30	32	35	32	129	32.25
11. Project Schedule	15	20	20	15	70	17.5
12. Project Budget	10	25	10	18	63	15.75
13. Project Organization	10	10	10	18	48	12
14. Project Implementation	10	25	21	25	81	20.25
15. Project Monitoring	10	25	17	20	72	18
16. Project Evaluation	15	20	10	10	55	13.75
17. Project Reporting	10	20	16	15	61	15.25
18. Project Communication	15	25	14	10	64	16
19. Project Stakeholder	22	10	25	18	75	18.75
20. Project Conclusion	23	20	25	25	93	23.25
21. Project Summary					0	0
22. Project Appendix	20	20	10	20	70	17.5
23. Project Glossary	20	20	8	20	68	17
24. Project Bibliography	20	10	9	10	49	12.25
25. Project Index	20	20	16	20	76	19
26. Project References	20	20	16	18	74	18.5
27. Project Notes	20	20	7	15	62	15.5
28. Project Comments	20	20	15	18	73	18.25
29. Project Questions	20	15	11	12	58	14.5
30. Project Answers	18	20	15	15	68	17
31. Project Feedback	20	20	20	20	80	20
32. Project Summary					0	0
33. Project Appendix	9	10	9	10	38	9.5
34. Project Glossary	10	10	9	10	39	9.75
35. Project Bibliography	8	5	9	5	27	6.75
36. Project Index	9	10	6	10	35	8.75
37. Project References	8	10	8	10	36	9
38. Project Notes	8	5	4	5	22	5.5
39. Project Comments	10	10	8	7	35	8.75
40. Project Questions	8	5	4	7	24	6
41. Project Answers	10	9	10	7	36	9
42. Project Feedback	10	10	10	10	40	10
43. Project Summary					0	0
44. Project Appendix	10	10	10	10	40	10
45. Project Glossary	10	10	10	10	40	10
46. Project Bibliography	10	10	10	10	40	10
47. Project Index	5	5	5	5	20	5
48. Project References	5	5	5	5	20	5
49. Project Notes	10	10	10	10	40	10
50. Project Comments	10	10	10	10	40	10
51. Project Questions	10	10	10	10	40	10
52. Project Answers	10	10	10	10	40	10
53. Project Feedback	10	10	10	10	40	10
54. Project Summary					0	0

Final Score	Average (for 5 Categories)	Rank
Amec Infrastructure	65	4
Aztec	63	6
Burgess & Niple	52.8	10
Carter & Burgess	68	2
Entranco	63	5
Inca Engineers, Inc.	53.8	9
Huitt Zollars	61.4	7
Kirkham Michael	58.8	8
Stantec	66.4	3
Tri-Core Engineering	78.4	1





## Camelback Road Improvements 64th Street to 68th Street



**CITY OF SCOTTSDALE  
ENGINEERING SERVICES CONTRACT**

THIS CONTRACT, made and entered into this 6th day of January, 2003, by and between the CITY OF SCOTTSDALE, a Municipal Corporation of the State of Arizona, hereinafter referred to as "City", and Tri-Core Engineering, a Corporation of the State of Arizona, hereinafter referred to as "Engineer".

WITNESSETH

THAT, the Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services; and

WHEREAS, the City desires to contract for Engineering services to widen and reconstruct Camelback Road from 64<sup>th</sup> Street to 66<sup>th</sup> Street; and

WHEREAS, Engineer is qualified to render the services desired by City;

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

**1.0 SCOPE OF SERVICES**

Engineer shall act under the authority and approval of the Contract Administrator to provide the engineering services required by this Contract.

The City wishes to assign Engineer the tasks specified in the attached Exhibit A, Project Scope of Work, which is hereby incorporated by reference and made a part of this Contract.

The Engineer shall obtain all necessary information for the timely completion of the tasks specified in Exhibit A, Project Scope of Work.

**2.0 FEES AND PAYMENTS**

**2.1 FEE SCHEDULE**

The amount paid to Engineer under this Contract shall not exceed \$182,179.00

**AND**

Engineer shall be paid according to the agreed upon fee proposal summary dated December 5, 2002 which includes a base contract fee of \$142,200.00 and allowance fees in the amount of \$39,979.00.

**2.2 PAYMENT APPROVAL**

The time spent for each task shall be recorded and submitted to the Contract Administrator. Engineer shall maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and make such materials available at all reasonable times during the contract period.

Monthly payments shall be made to the Engineer on the basis of a progress report prepared and submitted by the Engineer for work completed through the last day of the preceding calendar month. Each task shall be subject to review and approval by the Contract Administrator to determine acceptable completion.

The Contract Administrator shall prepare a partial payment request document for the Engineer's acceptance. However, not more than 90% of the total contract price shall be paid before City's final acceptance of all completed work. .

The Contract Administrator reserves the exclusive right to determine the amount of work performed and payment due the Engineer on a monthly basis.

All charges must be approved by the Contract Administrator prior to payment.

### **3.0 GENERAL TERMS AND CONDITIONS**

#### **3.1 CONTRACT ADMINISTRATOR**

The Contract Administrator for the City shall be J. Daniel Walsh, or designee. The Contract Administrator shall oversee the performance of this Contract, assist the Engineer in accessing the organization, audit billings, and approve payments. The Engineer shall submit all reports and special requests through the Contract Administrator.

#### **3.2 TERM OF CONTRACT**

This Contract shall expire on December 30, 2004.

**OR**

The Engineer agrees to proceed with the work immediately upon notification to proceed issued by the Contract Administrator and shall complete all design work within 240 calendar days, including City review.

This Contract shall be in full force and effect when it has been approved by the City Council of the City of Scottsdale, Arizona and signed by its Mayor as attested by the City Clerk thereof.

## TERM OF CONTRACT - CONT'D

This Contract shall be in full force and effect when all signatures have been affixed hereon.

In the event that any tasks remain incomplete after the specified completion time period, continuation of this Contract shall be subject to written approval by the Contract Administrator.

### 3.3 TERMINATION OF CONTRACT

The City has the right to terminate this Contract or abandon any portion of the project for which services have not been performed by the Engineer.

**Termination for Convenience:** City reserves the right to terminate this contract or any part hereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Engineer shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and Subcontractors to cease such work. As compensation in full for services performed to the date of such termination, the Engineer shall receive a fee for the percentage of services actually completed. This fee shall be in the amount to be mutually agreed upon by the Engineer and the City, based on the agreed Scope of Work. If there is no mutual agreement, the Contract Administrator shall determine the percentage of completion of each task detailed in the Scope of Work and the Engineer's compensation shall be based upon such determination. The City shall make this final payment within sixty (60) days after the Engineer has delivered the last of the partially completed items. Engineer shall not be paid for any work done upon receipt of the notice of termination, nor for any costs incurred by Engineer's suppliers or Subcontractors, which Engineer could reasonably have avoided.

**Termination for Cause:** City may also terminate this contract or any part hereof with seven (7) days notice for cause in the event of any default by the Engineer, or if the Engineer fails to comply with any of the terms and conditions of this contract. Unsatisfactory performance as judged by the Contract Administrator, and failure to provide City, upon request, with adequate assurances of future performance shall all be causes allowing City to terminate this contract for cause. In the event of termination for cause, City shall not be liable to Engineer for any amount, and Engineer shall be liable to City for any and all damages sustained by reason of the default which gave rise to the termination.

In the event Engineer is in violation of any Federal, State, County or City law, regulation or ordinance, the City may terminate this contract immediately upon giving notice to the Engineer.

In the event the City shall terminate this Contract or any part of the services as herein provided, the City shall notify the Engineer in writing, and immediately upon receiving such notice, the Engineer shall discontinue advancing the work under this Contract and proceed to close said operations.

Upon such termination or abandonment, the Engineer shall deliver to the City all drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data shall be the City's sole responsibility.

***Termination for Cause - Cont'd***

The Engineer shall appraise the work it has completed and submit its appraisal to the City for evaluation.

If through any cause, the Engineer shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Engineer shall violate any of the covenants, agreements, or stipulations of this Contract, the City may withhold any payments to the Engineer for the purpose of setoff until such time as the exact amount of damages due the City from the Engineer is determined by a court of competent jurisdiction.

***3.4 FUNDS APPROPRIATION***

If the City Council does not appropriate funds to continue this Contract and pay for charges hereunder, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice of termination to the Engineer at least thirty (30) days prior to the end of its current fiscal period and will pay to the Engineer all approved charges incurred through the end of such period.

***3.5 AUDIT***

The City may audit all of the Engineer's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

Engineer's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the City to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Engineer or any of his payees pursuant to the execution of the contract. The City's authorized representative shall be afforded access, at reasonable times and places, to all of the Engineer's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

Engineer shall require all Subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between Engineer and payee. Such requirements will also apply to any and all Subcontractors.

If an audit in accordance with this article, discloses overcharges, of any nature, by the Engineer to the City in excess of one percent (1%) of the total contract billings, the actual cost of the City's audit shall be reimbursed to the City by the Engineer. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Engineer's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Engineer.

***3.6 OWNERSHIP OF PROJECT DOCUMENTS***

All documents, including but not limited to, field notes, design notes, tracings, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, which are prepared in the performance of this contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Engineer.

*OWNERSHIP OF PROJECT DOCUMENTS - CONT'D*

When the work detail covers only the preparation of preliminary reports or plans, there shall be no limitations upon the City as to subsequent use of the plans or ideas incorporated therein, for the preparation of final construction plans. The City does agree to release the Engineer from any liability related to the preparation of final construction plans by others.

**3.7    *COMPLETENESS AND ACCURACY***

The Engineer shall be responsible for the completeness and accuracy of its work, including but not limited to, survey work, reports, supporting data, and drawings, sketches, etc. prepared or compiled pursuant to this Contract and shall correct, at its expense, all errors or omissions therein which may be disclosed. The cost necessary to correct those errors attributable to the Engineering errors shall be chargeable to the Engineer. Additional construction added to the project shall not be considered the responsibility of the Engineer unless the need for same was created by any error, omission, or negligent act of the Engineer. The fact that the City has accepted or approved the Engineer's work shall in no way relieve the Engineer of any of its responsibilities.

**3.8    *ATTORNEY'S FEES***

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action.

**3.9    *SUCCESSORS AND ASSIGNS***

This Contract shall extend to and be binding upon the Engineer, its successors and assigns, including any individual, company, partnership, or other entity with or into which the Engineer shall merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which the Engineer shall sell its assets.

**3.10   *ASSIGNMENT***

Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the Contract Administrator.

**3.11   *SUBCONTRACTORS***

During the performance of the Contract, the Engineer may engage such additional Subcontractors as may be required for the timely completion of this Contract. The addition of any Subcontractors shall be subject to the prior approval of the City.

In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with the Engineer.

**3.12 ALTERATIONS OR ADDITIONS TO SCOPE OF SERVICES**

The total Scope of Engineering Services to be performed in accordance with this Contract is set forth herein, and, if the Engineer is asked to perform services which are not included in this Contract, they will be considered additional services. The Engineer shall not perform these services without written authorization in the form of an approved Change Order from the City. In the event the Engineer performs the additional services without written authorization (Change Order) from the City to perform same, it shall be assumed that the additional services were included in the original Scope of Services and the fees set forth herein, and therefore, the Engineer shall not be permitted to request nor receive any additional compensation for those additional services.

**3.13 MODIFICATIONS**

Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract.

**3.14 CONFLICT OF INTEREST**

Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for Engineer any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to annul this Contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

The City may cancel any Contract or Agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the City's departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from the City is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. 38-511).

The Engineer shall reveal fully in writing any financial or compensatory agreement which it has with a prospective Engineer prior to the City's publication of documents for bidding.

**3.15 FORCE MAJEURE**

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

**3.16 TAXES**

The fee listed in this Contract includes any and all taxes applicable to the activities hereunder. The City shall have no obligation to pay additional amounts for taxes of any type.

**3.17 ADVERTISING**

No advertising or publicity concerning the City using the Engineer's services shall be undertaken without prior written approval of such advertising or publicity by the Contract Administrator.

**3.18 COUNTERPARTS**

This Contract may be executed in one or more counterparts, and each executed duplicate counterpart of this Contract shall be deemed to possess the full force and effect of the original.

**3.19 ENTIRE AGREEMENT**

This Contract constitutes the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

**3.20 ARIZONA LAW**

This Contract shall be governed and interpreted according to the laws of the State of Arizona.

**3.21 EQUAL EMPLOYMENT OPPORTUNITY**

The Engineer shall comply with Executive Order No. 11245, entitled "Equal Employment Opportunity", as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

**3.22 EVALUATION OF ENGINEER'S PERFORMANCE**

The Engineer will be evaluated regarding its performance of this Contract. This evaluation shall include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of plans (linework, lettering, etc.)
- Working relationship with City staff and others
- Availability
- Communication skills (meetings, correspondence, etc.)

This evaluation will be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

### 3.23 *NOTICES*

All notices or demands required to be given, pursuant to the terms of this Contract, shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

On behalf of the Engineer:

Tri-Core Engineering, Attn: Mr. Vince Gibbons, 2225 N. 44<sup>th</sup> Street, Suite: 205, Phoenix, AZ 85008

On behalf of the City:

City of Scottsdale, Attn: Mr. Dan Walsh, 7447 E. Indian School, Suite: 205, Scottsdale, AZ 85251

Notices shall be deemed received on date delivered if delivered by hand and on the delivery date indicated on receipt if delivered by certified or registered mail.

### 3.24 *INDEPENDENT CONTRACTOR*

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.), using Form 1099.

City shall not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

### 3.25 *INELIGIBLE BIDDER*

The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

### 3.26 *INDEMNIFICATION*

To the fullest extent permitted by law, Engineer, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Engineer relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Engineer's and Subcontractor's employees.

## INDEMNIFICATION – CONT'D

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

**4.0 INSURANCE**

This solicitation/contract contains two samples of Certificates of Insurance, the Standard Acord Certificate and the Certificate developed by the City of Scottsdale.

The City Certificate is preferred, however, the Acord Certificate is acceptable provided it is identical to the sample attached and contains the additional language and deleted language as reflected on the sample.

Failure to provide a Certificate of Insurance with the appropriate verbiage as indicated on the attached samples, will result in rejection of your certificate and delay in contract execution.

**Additionally Certificates of Insurance submitted without referencing a Contract number will be subject to rejection and returned or discarded.**

**4.1 Insurance Representations and Requirements****4.1.1 General:** Engineer agrees to comply with all applicable City ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of Engineer, Engineer shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to City of Scottsdale. Failure to maintain insurance as specified may result in termination of this Contract at City of Scottsdale's option.

**4.1.2 No Representation of Coverage Adequacy:** By requiring insurance herein, City of Scottsdale does not represent that coverage and limits will be adequate to protect Engineer. City of Scottsdale reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify any insurance deficiency shall not relieve Engineer from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.**4.1.3 Coverage Term:** All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of subject contract are satisfactorily performed, completed and formally accepted by the City of Scottsdale, unless specified otherwise in this Contract.

**Insurance Representations and Requirements – Cont'd**

- 4.1.4 Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.
- 4.1.5 Policy Deductibles and or Self Insured Retentions: The policies set forth in these requirements may provide coverage which contain deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to City of Scottsdale. Engineer shall be solely responsible for any such deductible or self-insured retention amount. City of Scottsdale, at its option, may require Engineer to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 4.1.6 Use of Subcontractors: If any work under this agreement is subcontracted in any way, Engineer shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting City of Scottsdale and Engineer. Engineer shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 4.1.7 Evidence of Insurance: Prior to commencing any work or services under this Contract, Engineer shall furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Engineer's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions, and limits of coverage and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the above-cited policies expire during the life of this Contract, it shall be Engineer's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:
1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies:
    - a) Commercial General Liability
    - b) Auto Liability
    - c) Excess Liability - Follow Form to underlying insurance.
  2. Engineer's insurance shall be primary insurance as respects performance of subject contract.
  3. All policies, except Professional Liability insurance if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Engineer under this Contract.

**Insurance Representations and Requirements – Cont'd**

**Evidence of Insurance- Cont'd**

4. Certificate shall cite a 30-day advance notice of cancellation provision. If ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

**4.2 Required Coverage**

- 4.2.1 **Commercial General Liability:** Engineer shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- 4.2.2 **Professional Liability:** If the Contract is the subject of any professional services or work, or if Engineer engages in any professional services or work adjunct or residual to performing the work under this Contract, Engineer shall maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Engineer, or anyone employed by Engineer, or anyone for whose acts, mistakes, errors and omissions Engineer is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the work or services, and Engineer shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.
- 4.2.3 **Vehicle Liability:** Engineer shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each accident on Engineer's owned, hired, and non-owned vehicles assigned to or used in the performance of the Engineer's work or services under this Contract. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- 4.2.4 **Workers Compensation Insurance:** Engineer shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Engineer's employees engaged in the performance of work or services under this Contract, and shall also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

## **5.0 SOFTWARE LICENSES**

As to all software licenses provided to the City as part of Engineer's obligations under this Contract, the following provisions apply:

### **5.1 SOURCE CODE AVAILABILITY**

5.1.1 Engineer shall furnish City, without charge, a single copy of the Source Code for the Software immediately upon the occurrence of any of the following:

1. Engineer becomes insolvent; or
2. Engineer ceases to conduct business; or
3. Engineer makes a general assignment for the benefit of creditors; or
4. A petition is filed in Bankruptcy by or against Engineer.

5.1.2 Use of the Source Code shall be subject to the same restrictions as to which the Software itself is subject.

5.1.3 City shall have the right to modify Source Code in any manner it deems appropriate, provided that the Source Code as modified shall remain subject to the restrictions set forth in 5.1.2 immediately above.

### **5.2 PROPRIETARY PROTECTION**

5.2.1 City acknowledges that to the extent Engineer advises the City that the Software is confidential information or is a trade secret property of the Engineer, the Software is thereby disclosed on a confidential basis under this Contract and is to be used only pursuant to the terms and conditions set forth herein.

5.2.2 Engineer shall not use or disclose any knowledge, data or proprietary information relating to City obtained in any manner whatsoever.

5.2.3 To the extent permitted by Arizona Law, the parties agree, both during the term of this Contract and for a period of seven (7) years after termination of this Contract and of all licenses granted hereunder, to hold each others' confidential information in confidence. The parties agree, unless required by government regulations or order of court, not to make each others' confidential information available in any form to any third party or to use each other's confidential information for any purposes other than the implementation of this Contract provided, however, that if Engineer's confidential information is requested to be divulged under the provisions of the Arizona Public Records Act, A.R.S., Title 39, Engineer shall reimburse to City the full cost of City's refusal to release the information, including costs of litigation, City's attorney fees, fines, penalties or assessments of opposing party's attorney fees. Each party agrees to take all reasonable steps to ensure that confidential information is not disclosed or distributed by its employees or agents in violation of the provisions of this Contract.

### **5.3 NON-INFRINGEMENT**

Engineer warrants that the Software provided hereunder does not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary or property right of any person or entity.

**SOFTWARE LICENSES – CONT'D**

**NON-INFRINGEMENT – CONT'D**

In the event of a claim against City asserting or involving such an allegation, Engineer will defend, at Engineer's expense, and will indemnify City and hold City harmless against any loss, cost, expense (including attorney fees) or liability arising out of such claim, whether or not such claim is successful. In the event an injunction or order should be obtained against use of the Software by reason of the allegations, or if in Engineer's opinion the Software is likely to become the subject of such a claim of infringement, Engineer will, at its option and its expense: (i) procure for the City the right to continue using the Software; or (ii) replace or modify the same so that it becomes non-infringing (such modification or replacement shall be functionally equivalent to the original); or (iii) if neither (i) nor (ii) is practicable, repurchase the Software on a depreciated basis utilizing a straight line five (5) year period, commencing on the date of acceptance.

**5.4 THIRD PARTY LICENSE**

Engineer shall sublicense to City any and all third party Software required in the execution of this Contract. City reserves the right to accept or reject third party license terms. If City rejects the terms of a third party license, it shall be Engineer's responsibility to negotiate acceptable terms or to supply Software from another source with terms acceptable to City. City's acceptance of the third party license terms shall not be unreasonably withheld.

**6.0 SEVERABILITY AND AUTHORITY**

**6.1 SEVERABILITY**

If any term or provision of this Contract shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract shall remain in full force and effect and such term or provision shall be deemed to be deleted.

**6.2 AUTHORITY**

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each party has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read, understands, and agrees to be bound by the terms and conditions of this Contract.

IN WITNESS WHEREOF, the City of Scottsdale by its Mayor and City Clerk have hereunto subscribed their names this 6th day of January, 2003.

CITY OF SCOTTSDALE

\_\_\_\_\_  
Mary Manross, Mayor

ATTEST:

ENGINEER:

\_\_\_\_\_  
Sonia Robertson, City Clerk

Tri-Core Engineering

\_\_\_\_\_  
*D. Warren* for

\_\_\_\_\_  
Monroe C. Warren  
Purchasing Director

\_\_\_\_\_  
*Vince Gibbons*  
Signature

\_\_\_\_\_  
Vince Gibbons  
Name

\_\_\_\_\_  
*Suzanne M. Welch for*  
Myron Kuklok  
Risk Management Director

\_\_\_\_\_  
President  
Title

\_\_\_\_\_  
*D. Walsh*  
J. Daniel Walsh  
Contract Administrator

APPROVED AS TO FORM:

\_\_\_\_\_  
*David A. Pernartz*  
David A. Pernartz  
City Attorney

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID BR DATE (MM/DD/YYYY)  
TRICO-1 12/19/02

PRODUCER  
Stuckey Ins & Assoc Agencies  
P.O. Box 7020  
Phoenix AZ 85011-7020  
Phone: 602-264-5533 Fax: 602-279-9336

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

INSURED  
Tri-Core Engineering, LLC.  
2255 N 44th Street #255  
Phoenix AZ 85008

INSURERS AFFORDING COVERAGE  
INSURER A: American Motorists Ins Co  
INSURER B: American Manufacturers Mutual  
INSURER C: Security Ins Co of Hartford  
INSURER D:  
INSURER E:

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD LTR	INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJ. <input type="checkbox"/> LCC	7RS800475-01	11/01/02	11/01/03	EACH OCCURRENCE \$ 1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500000 MED EXP (Any one person) \$ 10000 PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COM/OP AGG \$ 2000000
A	X	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	F7R002859-00	11/01/02	11/01/03	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A	X	<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10000	7RS800475-01	11/01/02	11/01/03	EACH OCCURRENCE \$ 2000000 AGGREGATE \$ 2000000 \$ \$ \$
B		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	7BH089767-01	11/01/02	11/01/03	<input checked="" type="checkbox"/> WC STAT- TORY LIMITS <input type="checkbox"/> OTH- ER E.L. EACH ACCIDENT \$ 1000000 E.L. DISEASE - EA EMPLOYEE \$ 1000000 E.L. DISEASE - POLICY LIMIT \$ 1000000
C		Professional Ins	ARE0227948	11/01/02	11/01/03	2000000 2000000 Per Claim Aggregate

## DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

City of Scottsdale its representatives agents adn employees, is an additional insured under Commercial General Liability ISO Form CG 20 10 or equivalent, Auto Liability ISO Form CA 2048 or equivalent, and excess liability follow form to underlying coverage. See attached form which becomes part of this form.

## CERTIFICATE HOLDER

CISCO10

City of Scottsdale  
Suzan Walsh  
9191 E San Salvador Dr  
Scottsdale AZ 85258

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ~~NOTIFY THE CERTIFICATE~~ 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT ~~NOTIFY THE CERTIFICATE~~

AUTHORIZED REPRESENTATIVE

*Larry Stuckey*

© ACORD CORPORATION

# NOTEPAD

## Certificate for City of Scottsdale

All cited insurance shall be primary coverage as respects the insureds operations and waive rights of recovery ( Subrogation), including Workers Compensation against City of Scottsdale. No policy shall be canceled or materially changed without 30 days advance written notice. Certificate not valid unless signed by authorized representative of insurance company.

Contract Number 2003001COS - Camelback Road Improvements 64th Street to East of 66th Street

## **EXHIBIT A**

### **ENGINEERING SCOPE OF WORK**

#### **CAMELBACK ROAD, 64<sup>TH</sup> STREET TO EAST OF 66<sup>TH</sup> STREET**

##### **I. BRIEF DESCRIPTION OF THE PROJECT**

- A. The Engineer, acting under the authority and to the approval of the Contract Administrator, shall perform the necessary analysis, studies and surveys required to design the widening and reconstruction of Camelback Road from 64<sup>th</sup> Street to east of 66<sup>th</sup> Street. The purpose of the project is to make improvements to this reach of Camelback Road including new asphalt pavement, raised median with landscaping, storm water and storm drain work, and continuous curb and gutter and sidewalk. Camelback Road will be widened to a five-lane section (two lanes westbound & three lanes eastbound) with raised median utilizing a modified Couplet Street Section (Figure 3.1-5). The work includes a drainage analysis and report, storm water and storm drain design, surveying, right-of-way legal descriptions, geotechnical investigations and recommendations, landscaping and irrigation design, one or more public meetings, DRB submittal, traffic signal relocation, striping layout, street light design, potholing, and preparation of plans, special provisions and cost estimates.

##### **II. GENERAL REQUIREMENTS**

- A. DESIGN STANDARDS – All work shall conform to:

1. The M.A.G. Standard Specifications and Details
2. The City of Scottsdale M.A.G. Supplemental Specifications and Supplemental Standard Details
3. The latest City of Scottsdale Design Standards and Policy Manual
4. All applicable uniform and national codes along with the city amendments as adopted by ordinance
5. AWWA, NSF, ACI, ASTM, etc. as applicable
7. Other applicable specifications and details required by a governmental agency or utility company

The Engineer is responsible for providing the work to meet the latest City of Scottsdale Design Standards and Policies Manual. Any design criteria, plan preparation techniques or other requirements established herein shall take precedence over any other conflicting standards or specifications.

- B. QUALITY CONTROL – Quality control is a management system for producing a product, which complies with the terms of the contract. The Engineer is responsible for maintaining a Quality control Program that will provide a quality product. The Engineer shall meet with the Contract Administrator to review and discuss the designed system they have implemented to ensure a successful end product through out the design. The system shall be acceptable to the Contract Administrator. Subsequent changes may be determined necessary if the program is not producing the quality of work required by the contract.
- C. PROJECT DESIGN SCHEDULE – Prior to commencing any work, the Engineer and the Contract Administrator shall meet to determine the project design schedule. The Engineer shall meet with the Contract Administrator, prior to the monthly billing, to assess the projects' progress in relation to the design schedule. In the event that the Engineer falls behind the accepted design schedule, the Engineer shall be required to provide documentation explaining each event that caused the

project to be delayed. In addition, the Engineer must prepare a written statement to identify what steps will be taken to return to the project to its original schedule. This documentation will be necessary prior to payment approval.

### III. TASKS

- A. PROJECT MANAGEMENT – This task will provide a firm foundation for overall project management and monitoring. The Engineer will prepare monthly progress reports utilizing the City's Issue Tracking Form (ITF) format; perform regular budget and schedule monitoring; provide utility coordination; and manage sub-consultants.
- B. DATA COLLECTION
  - 1. The Engineer shall:
    - a. Visit the site with the Contract Administrator and other City staff members, prior to commencement of the work to insure an onsite understanding of the nature of the work
    - b. Obtain all available maps, studies, records, and right-of-way information
    - c. Verify GIS data, as-built plans, and utility information
    - d. Review the City's Water Master Plan, current updates and pertinent data and studies of the work to be performed
  - 2. It shall be the responsibility of the Engineer to determine, request and obtain specific data and information needed to perform the work. The Engineer shall provide all necessary research and data collection required determining and identifying all existing project area utilities. The Engineer shall perform potholing of underground utilities, to determine and identify all existing project area utilities.
  - 3. All data obtained from the City (i.e. – quarter sections, contour maps, aerial photography, etc.) shall be provided at no cost to the Engineer.
- C. UTILITY COORDINATION
  - 1. The Engineer shall coordinate with utility companies and other agencies to incorporate existing and proposed utility facilities into the construction plans as necessary. All existing and proposed utilities shall be shown in the plan and profile on the preliminary and final construction plans. The Engineer shall notify and coordinate the utilities in accordance with the AUCC "Public Improvement Project Guide". Initial contact with utility companies shall be made under the data collection task as record drawings are being collected.
  - 2. The Engineer shall be responsible for field verifying the horizontal and vertical locations of all utilities within the project limits. Utility base maps prepared by the Engineer, detailing all existing data, shall be transmitted to the utility companies for verifications and comment concerning the utility locations. Their comments shall be incorporated into the base maps.
  - 3. The Engineer shall be completely responsible for scheduling the location and number of potholes with the affected utility, resolving potential conflicts and shall diligently pursue resolution of all conflicts with the official utility until acceptable solutions are designed. The Engineer shall be responsible for providing underground utility locating services utilizing an air vacuum method of excavations, which produces a hole in the pavement not greater than 12 inches in diameter. The City's Contract Administrator prior to commencement of activities shall review the number and location of potholes required for design. Fees for potholing shall be based upon a per location allowance which shall include the cost for barricading, securing permits/permission from all concerned agencies, pavement restoration, report preparation, recording the thickness of the asphalt when borings occur in the existing paved roadway, and other incidental items. To

minimize traffic congestion and barricading, all potholing shall occur in their shortest time frame and during non-peak traffic hours.

D. SURVEY

1. The Engineer shall perform all necessary survey work to establish horizontal and vertical ground control and to provide topographic information for all existing conditions and features throughout the project limits.
2. All survey work shall be based on current City of Scottsdale datum.
3. The survey shall include the location of existing structures, property lines, drainage ways, and easements.
4. Survey extents shall clearly demonstrate the relationship of the site to the adjacent properties.

E. GEOTECHNICAL INVESTIGATION

The Engineer shall perform a geotechnical analysis of the existing conditions. A geotechnical report shall be submitted for the determination of the structural design of the pavement section and to make recommendations for the storm drain connector pipe system. An Engineer registered in the State of Arizona must seal the report.

1. The following information shall be included in the Geotechnical Report:
  - a. Vicinity map of the project limits
  - b. Plot plan showing location of borings
  - c. Boring Logs
  - d. Detailed descriptions of surface and subsurface conditions
  - e. Summary of laboratory tests performed and tests results. Typical testing shall include grain size and distribution, moisture, plasticity, compaction, R-value, and shrink/swell testing.
  - f. Summary of geotechnical recommendations for pavement and base materials, and storm drain backfill and bedding criteria.

F. DRAINAGE

1. The City shall provide copies of the Camelback Road corridor drainage study and hydrology model.
2. The Engineer shall conduct a field investigation of the proposed street improvement site and surrounding area to become familiar with drainage patterns.
3. The Engineer shall review all reports, maps, and aerial photographs as necessary to become familiar with this project.
4. The Engineer shall prepare a Drainage Report in 8.5 x 11 format that shall include on-site and off-site drainage analysis. The existing storm drain system will be analyzed as part of this report.
5. The engineer shall design a storm drain system to provide for interception of the 10-year storm as stipulated in Chapter 2 of the latest City of Scottsdale Design Standards and Policy Manual. The existing mainline pipe (42" to 72") will be utilized as part of this design if possible.

G. MEETING PARTICIPATION

As part of the contractual relationship with the City, the Engineer shall attend, prepare agenda and take notes at the meetings outlined herein. The notes shall be furnished to the Contract Administrator in the form of minutes. The notes shall address action items and the responsible parties. The Contract Administrator shall review and approve all meeting notes.

1. Project Status: The Engineer shall attend monthly meetings with the Contract Administrator to keep the City abreast of the project status and gather information for the improvements desired by the City. The meetings will be held at City offices.
2. Utility Coordination: The Engineer shall organize and attend utility coordination meetings.
3. Public Informational Meetings: The Engineer shall prepare for, organize and attend one public informational meeting to communicate the scope and impact of the project to the affected public.
4. Development Review Board: The Engineer shall attend and prepare all materials required for application to, and presentation at, the DRB and attend all meetings and study sessions prerequisite to approval of the project.
5. Pre-bid: The Engineer's project manager and key project staff members shall attend a pre-bid conference to address technical questions asked by the prospective bidders.
6. Construction on site meetings: The Engineer's project manager shall attend four on-site meetings during construction of the project to address any technical issues and/or questions asked by the contractor.

#### H. LANDSCAPING/IRRIGATION PLANS

1. The Engineer is responsible for landscape and irrigation design within the raised median areas and integration with the existing landscaping and irrigation system on the south side beyond the new sidewalk, in accordance with City requirements.
2. Landscape design shall be sealed by an Arizona Registered Landscape Architect and be accepted by the DRB.
3. The Engineer shall provide all materials necessary for the Development Review Board pre-application and DRB presentation, as required.

#### I. STRIPING, TRAFFIC SIGNAL, AND STREET LIGHT DESIGN

1. Design and produce striping (markings) plan sheets for the street segment, including obliteration notes, raised pavement markers and hydrant locators where appropriate. Prepare transitions to markings beyond project limits. Plans shall be produced at 1 inch equal to 20 feet.
2. Prepare the traffic signal relocation plans for the intersections of 64<sup>th</sup> and 66<sup>th</sup> Streets. Traffic signal plans shall include all demolition/removal/relocation of the existing system, traffic detection loops, and new system components required.
3. Design and produce street light plan sheets for the street segment including the underground electrical system, connection to existing or new underground power source, bases, poles, luminaries, and coordination with APS and/or SRP for review and approval.

#### J. STREET DESIGN

1. Street design shall include geometric layout; profiles of centerline and north and south gutter lines, cross slope layout, bus bay layout, and tie-ins to existing improvements.

**K. RIGHT-OF-WAY**

1. The Engineer shall perform all data research required to determine existing right-of-way, and to obtain ownership records for parcels involving new right-of-way acquisition. Legal descriptions shall be prepared for each parcel wherein new right-of-way is required.

**IV. PROJECT PREPARATION AND SUBMITTAL GUIDELINES**

**A. GENERAL INFORMATION**

1. These guidelines are a source of information available to assist the Engineer in the design and preparation of materials as required by the City of Scottsdale Capital Project Management.
2. The City's function in connection with submitted plans, specifications, construction cost estimates, drainage reports, etc. is that only of review for conformance with design standards, procedures and criteria established by the City; the City shall not be responsible for checking the Engineer's plans for accuracy or engineered design.
3. The Engineer shall be responsible for:
  - a. Compliance with the City's design standards, policies and this Scope of Work.
  - b. Preparation of plans and specifications of a quality representative of the profession, which are both clear and of sufficient detail to provide the Contractor direction by which this project may be constructed.
  - c. Researching and obtaining available materials, maps, as-builts, reports, etc., as may be applicable to this project.
  - d. On-going communication and informal contact with the City of Scottsdale Capital Project Management and Transportation CIP Planning staff.
4. In addition to the submittal of plans and documents described herein, other materials may be required for presentation to the Development Review Board, community meetings, etc. The requirements for these items are described elsewhere within the Project Scope of Work

**B. SUBMITTALS – GENERAL REQUIREMENTS**

1. All submittals shall be made to the Contract Administrator. A Capital Improvements Project generally consists of a conceptual study followed by three plans submittal phases prior to the delivery of all final and approved design documents to the City. This project will not include the preparation of a conceptual study.
2. It shall be the Engineer's responsibility to submit plans and coordinate with all agencies having utilities within the project limits. Likewise, the Engineer shall abide by any intergovernmental agency agreements and procedures. The engineer will coordinate and obtain review approval from all governmental agencies as needed to obtain all required approvals.
3. If a plan does not contain sufficient information to adequately review that phase of the design, the plans will be returned to the Engineer for completion and resubmittal of that phase of the project.
4. The City will arrange a meeting with the Engineer upon its completion of the review submittal to discuss the direction in which the work is proceeding, make note of any recommendations by the engineer and voice any concerns over the project.

5. The City's function in connection with the submitted plans, specifications, construction cost estimates, design reports, etc. is that only of review for conformance with design standards, procedures and criteria established by the City. The City shall not be responsible for checking the Engineer's plans for accuracy or engineered design.

C. FIRST SUBMITTAL (Initial Documents)

The first submittal is limited to the following:

1. The Preliminary Drainage Report
  - a. Establish the site hydrology and support the proposed grade and alignment design.
  - b. Initial sizing of facilities
2. Preliminary Geometry Layout.
4. Right-of-way requirements exhibit
5. Prepare/present project to development review board - Rendered site plans including landscaping will be required. Coordinate the pre-application and DR meeting requirements with Project Review.
6. Materials submitted to the Contract Administrator:
  - Three (3) preliminary drainage reports
  - Three (3) copies of the geometric layout plot
  - Three (3) geotechnical reports
  - Three (3) copies of the right-of-way requirements exhibit

D. SECOND SUBMITTAL (60% Documents)

This is a progress submittal to the City of the final design materials. It will also be the initial submittal to the City to the Project Review Department's engineering, fire, planning and building units for review and comment.

The Engineer shall provide to the City design drawings or progress updates, of any concurrent improvements by a private utility agency.

1. 60% plans for:
  - a. Street plan and profile
  - b. Storm drain system plan and profile
  - a. Street Light plan
  - b. Striping plan
  - c. Traffic signal relocation plan
  - d. Landscape and irrigation plan
2. Construction cost estimate: Updated detailed construction cost estimate
3. Schedule of bid items draft
4. Final Drainage Report
  - a. Address all previous City comments
  - b. Complete report to include:
    - (1). Completed narrative of existing and proposed conditions
    - (2). Supporting hydrology calculations
    - (3). Sizing of facilities
    - (4). Supporting references

- (5). Copies of computer assisted calculations
- (6). Detailed drainage plan

5. Preliminary Special Provisions

6. Materials submitted to the Contract Administrator:
- Previous City redlines and annotated review comments
  - Six (6) complete sets of plans
  - Three (3) final drainage reports
  - Two (2) construction cost estimates
  - Two (2) schedule of bid items

E. THIRD SUBMITTAL (90% Documents)

The third submittal is a completed package to the City for final plan review. The drawings shall be fully completed in accordance with the Scope of Work. Any previous comments shall be resolved and final documents stamped by a professional engineer registered in the State of Arizona shall be submitted. The Special Provisions shall be complete to allow for final review and comment. All previous City redlined materials shall be returned to the City for final back check.

- 1. Final plans for:
  - a. Street plan and profile
  - b. Storm drain system plan and profile
  - d. Street Light plan
  - e. Striping plan
  - f. Traffic signal relocation plan
  - e. Landscape and irrigation plan
- 2. Final detailed Engineer's construction cost estimate
- 3. Approved drainage report -- Sealed reports
- 4. Final special provisions -- For City review
- 5. Bid schedule -- Complete schedule of bid items
- 6. Materials submitted to the Contract Administrator:
  - Previous City redlines and annotated review comments
  - Six (6) complete sets of plans
  - Three (3) special provisions
  - Three (3) final drainage reports
  - Two (2) construction cost estimates
  - Two (2) schedule of bid items

F. APPROVED PLANS

All final comments from the third review conference shall be resolved and any required resubmittals to the City shall be provided. The Engineer shall deliver a complete set of professionally sealed original contract documents to the City. Drawings shall be submitted on 24"x 36" 4-mil. mylar sheets.

In addition to the original contract documents, the Engineer shall provide to the City all drawings, Special Provisions, bid schedules or other contract document material stored on IBM compatible magnetic diskettes (MicroStation™ for drawings and MS Word™ for written materials; or as approved by the Contract Administrator).

Any other approvals required the Engineer prior to final approved plans submittal shall obtain (Health Dept., Flood Control District, etc.) to the City.

1. Materials submitted to the Contract Administrator:
  - Previous City redlines and annotated review comments
  - Original drawings with original seals
  - Six (6) complete sets of plans prints
  - Original Special Provisions and Bid Schedule
  - Magnetic diskettes containing drawings and written materials.

G. BIDDING PHASE

The Engineer shall make their services available to the City, for advice and consultation, and interpretation of the plans and specifications. The Engineer shall develop and provide to the City all required project addenda during the project bidding phase.

The Engineer shall attend and participate at the project pre-bid meeting.

H. CONSTRUCTION PHASE SERVICES

1. Engineer shall review for approval, all shop drawing submittals by the contractor.
2. Engineer shall respond to all Contractor "request for information" (RFI) inquiries.
3. Engineer shall attend four construction meetings (on site) during construction.

I. MISCELENEOUS ITEMS

1. Reimbursable expenses will not be tracked or paid for separately but will be included in the lump sum contract fee.
2. All blue-line and other printing processes required to produce plan sets, specifications and reports for this project will be performed by Thomas Reprographics, and will be charged directly to the City by Thomas Reprographics through the City's ongoing account.

Camelback Road Improvements 64th to 68th Street Scores SOQs (November 2002)

	Total Points per Reviewer				Total	Average
	Reviewer 1	Reviewer 2	Reviewer 3	Reviewer 4		
	32	30	20	25	107	26.75
	30	30	20	25	105	26.25
	32	25	18	25	100	25
	33	35	30	30	128	32
	35	30	20	28	113	28.25
	30	25	20	15	90	22.5
	33	25	20	20	98	24.5
	33	30	25	20	108	27
	30	30	25	28	113	28.25
	30	32	35	32	129	32.25
	15	20	20	15	70	17.5
	10	25	10	18	63	15.75
	10	10	10	18	48	12
	10	25	21	25	81	20.25
	10	25	17	20	72	18
	15	20	10	10	55	13.75
	10	20	16	15	61	15.25
	15	25	14	10	64	16
	22	10	25	18	75	18.75
	23	20	25	25	93	23.25
	20	20	10	20	70	17.5
	20	20	8	20	68	17
	20	10	9	10	49	12.25
	20	20	16	20	76	19
	20	20	16	18	74	18.5
	20	20	7	15	62	15.5
	20	20	15	18	73	18.25
	20	15	11	12	58	14.5
	18	20	15	15	68	17
	20	20	20	20	80	20
	9	10	9	10	38	9.5
	10	10	9	10	39	9.75
	8	5	9	5	27	6.75
	9	10	6	10	35	8.75
	8	10	8	10	36	9
	8	5	4	5	22	5.5
	10	10	8	7	35	8.75
	8	5	4	7	24	6
	10	9	10	7	36	9
	10	10	10	10	40	10
	10	10	10	10	40	10
	10	10	10	10	40	10
	10	10	10	10	40	10
	5	5	5	5	20	5
	5	5	5	5	20	5
	10	10	10	10	40	10
	10	10	10	10	40	10
	10	10	10	10	40	10
	10	10	10	10	40	10
	10	10	10	10	40	10
Final Score	Average (for 5 Categories)				Rank	
Amec Infrastructure	65				4	
Aztec	63				6	
Burgess & Niple	52.8				10	
Carter & Burgess	68				2	
Entranco	63				5	
Inca Engineers, Inc.	53.8				9	
Huitt Zollars	61.4				7	
Kirkham Michael	58.8				8	
Stantec	66.4				3	
Tri-Core Engineering	76.4				1	









# CITY COUNCIL REPORT



MEETING DATE: 01/06/2003    ITEM NO. 6    GOAL: Neighborhoods

## **SUBJECT**

**Construction Contract Award for Paiute Neighborhood Center Buildings 7 and 9 Remodel**

## **REQUEST**

Authorize Construction Contract Award No. 03PB047 for the renovation of Paiute Neighborhood Center Buildings 7 and 9 to Regency Development, Inc., the lowest responsive, responsible bidder at their lump sum bid of \$ 508,958.00 for the base bid and Alternates 1 (aerobic exercise bars) and 2 (window security bars).

### **Related Policies, References:**

Development Review Board, staff approval (No.57-SD-1983), November 29, 2001; City Council award of architectural design contract (#2002-006-COS), January 7, 2002.

## **BACKGROUND**

Paiute Neighborhood Center is in the location of the original Scottsdale Paiute Elementary School, which was built in 1961. The School District closed the facility and sold the property to a private developer. In 1993, as a result of a community needs assessment in this neighborhood, the city, working with the private Ville de Marie Academy, purchased eight of the ten buildings and the Academy acquired the two buildings in which it is currently operating. The Paiute Neighborhood Center officially opened its doors in 1995. Six of the eight city-owned buildings have been remodeled in the intervening years. This contract is to remodel the remaining two buildings. Funding for the renovation of the buildings came through city capital funds and through partnerships with several private organizations. This successful partnership 'adopt a building' program has resulted in the following building projects:

- Building 1, which houses the administrative offices for the City and the Scottsdale-South YMCA was adopted by Terravita by Del Webb.
- Building 2 was adopted by Motorola, which contributed over \$200,000 in hard dollars and in-kind donations
- Building 3 was adopted by Salt River Project, which made an initial donation of \$15,000
- Building 6 was made possible by contributions of \$68,800 from the Soroptimists International of Scottsdale and Partners for Paiute.
- Building 8 is the site of services provided by the Maricopa Integrated Healthcare system, which contributed to the renovation of this building for their use.
- Building 10 received contributions for additional amenities from an initial contribution of \$15,000 and an additional annual funding of \$2,000-4,000

Action Taken \_\_\_\_\_

from the Scottsdale Association of Realtors.

- Building 7, which will be remodeled under this contract, has been adopted by Scottsdale Community College. Classroom space will be provided for its use on this campus. Also, this building will house facilities for senior citizen activities.
- Building 9, which will also be renovated under this contract, is made possible through in-kind contributions well exceeding \$15,000 from The Scottsdale Tribune. This facility is a 40-50 seat auditorium that will serve as a theater, community meeting hall, and presentation room.

The Paiute Neighborhood Center provides space for such non-profit social service brokerage agencies as Scottsdale Bar Association, Scottsdale Prevention Institute, Scottsdale Healthcare, Scottsdale-South YMCA, Campfire Boys and Girls program, Scottsdale Boys and Girls Clubs, and Maricopa County Head Start. In collaboration with these private agencies, the city provides other social service programs including after-school programs for recreation and education, counseling, and youth and family services. Many events are held at these facilities throughout the year providing opportunities for community enhancement and revitalization. During FY 2001/2002, nearly 114,000 citizen contacts were made at the Center through the various programs.

This renovation for Buildings 7 and 9 entails completely remodeling the buildings with new rooms, new paint and flooring, ceiling treatments, and mechanical systems. The project will also include the renovation of the remaining portions of the original wooden walkway canopy to match the new metal canopy constructed in a previous project.

## **ANALYSIS & ASSESSMENT**

### **Recent staff action:**

Staff from Capital Projects Management and Human Services has worked with the architect to develop the design of the renovated buildings.

### **Contract process and terms:**

Bids for this construction project were opened on December 17, 2002 at 3:00 p.m. Bids were received as follows:

	<u>Base Bid</u>	<u>Alt. 1</u>	<u>Alt. 2</u>
Regency Development	\$500,560.00	\$3,978.00	\$4,420.00
Chaparral Construction	\$497,000.00	\$9,700.00	\$9,400.00
Niche Contractors, Inc.	\$512,462.00	\$9,432.00	\$4,574.00
S&S Paving & Construction	\$540,788.00	\$10,695.00	\$4,600.00
Woodruff Construction	\$552,705.00	\$6,288.00	\$5,240.00
TI Specialists	\$565,396.00	\$11,550.00	\$4,255.00
Close Construction	\$559,000.00	\$25,400.00	\$6,500.00
Bunney's Inc.	\$578,000.00	\$3,790.00	\$10,000.00
Skyline Builders & Restoration, Inc.	\$587,342.00	\$9,250.00	\$12,899.00

Alternate 1, aerobic exercise bars, and Alternate 2, window security bars, will be installed in Building 7.

The Purchasing Director concurs with the identification of the successful bidder and confirms that the procurement procedures provided by the City Code have been followed. The CIP Coordinator concurs that funds are available to authorize this contract.

### **Community involvement:**

Preparation of the construction documents included two public meetings. City

staff made initial contact with the citizens affected in 2001 to discuss the planned capital improvements. The community was given a second opportunity to participate in the design process and reviewed the project designs on April 3, 2002.

## RESOURCE IMPACTS

### Available funding:

Funds for this contract are available in CIP Account No. 400-P0211 (Paiute Neighborhood Center Buildings 7 & 9 Remodel/Walkway).

### Cost recovery options:

Capital funding for this account is from the 2000 Bond election.

### Staffing, workload impact:

There is no requirement for additional staff in order to open these remodeled buildings for use.

### Maintenance requirements:

These existing buildings are already in the city facility inventory and, therefore, will result in no additional facility operation and maintenance costs.

## OPTIONS & STAFF RECOMMENDATION

### Description of Option A:

Authorize the award of this construction contract. Awarding this contract will allow the completion of the long-range plan of renovating all of the city-owned buildings at this campus. The completion of this work will also satisfy the commitment to the Scottsdale Community College from whom the City accepted at \$15,000 'adopt a building' contribution.

### Description of Option B:

Reject all contract bids for this project. These buildings will remain unusable for the proposed programs to be offered in them.

### Recommended Approach:

Staff recommends Option A, which is for the award of this construction contract.

### Proposed Next Steps:

Following the award of the contract, the required contract documents will be prepared and executed by the contractor. Work is scheduled to begin in February 2003 and be completed in 180 calendar days.

## RESPONSIBLE DEPT(S)

Municipal Services/Capital Project Management and Community Services/Human Services

## STAFF CONTACT(S)

Doreen Song P.E., Project Manager, (480) 312-2367, [dsong@scottsdaleaz.gov](mailto:dsong@scottsdaleaz.gov)

## APPROVED BY

  
Al Dreska

12/20/02  
Date

Municipal Services General Manager  
[adreska@scottsdaleaz.gov](mailto:adreska@scottsdaleaz.gov), (480) 312-5555

  
Roger Klingler

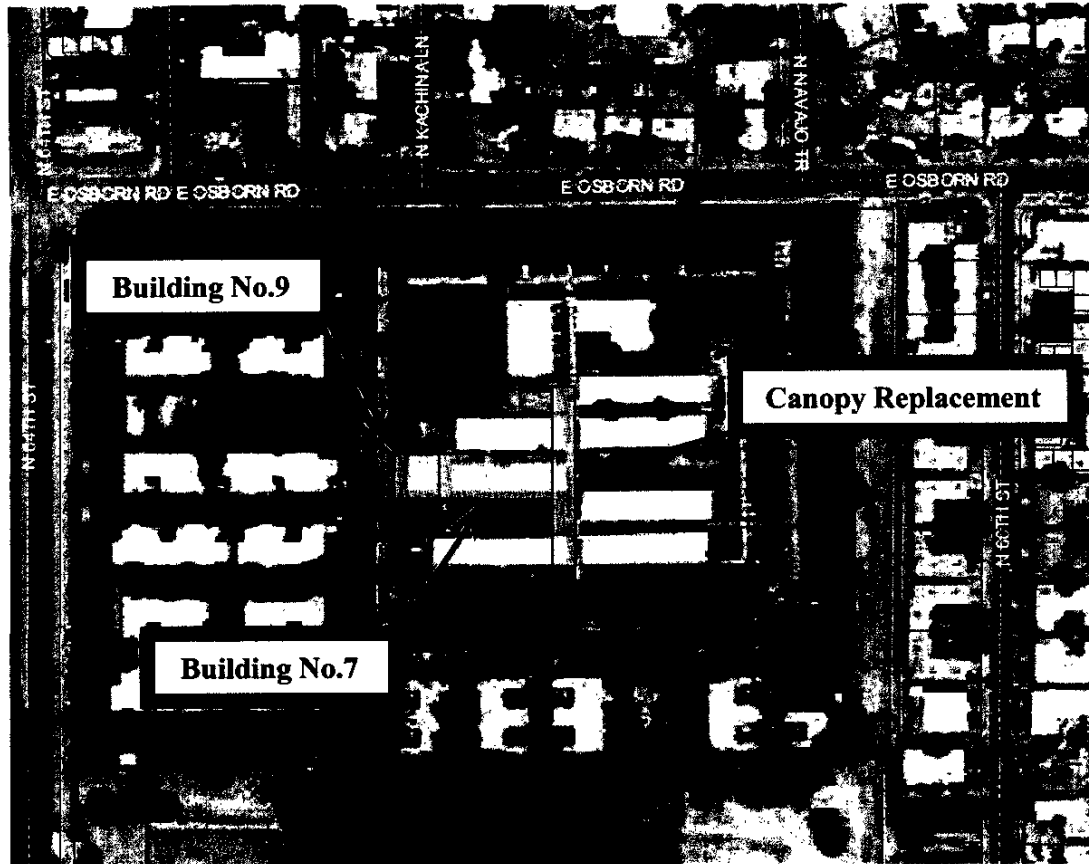
12/23/02  
Date

Assistant City Manager  
[rklingler@scottsdaleaz.gov](mailto:rklingler@scottsdaleaz.gov), (480) 312-5830

## ATTACHMENTS

1. Location Map





Attachment 1. Project Location Map:  
Paiute Neighborhood Center  
Buildings 7 and 9





# CITY COUNCIL REPORT



MEETING DATE: 1/6/03

ITEM No. 7 GOAL: Transportation

## **SUBJECT**

**Construction Contract Award for Scottsdale Road, Wall/Utility Phase from Hummingbird Lane to Berniel Drive.**

## **REQUEST**

AUTHORIZE Construction Contract Award No. 03PB041 to Achen-Gardner Engineering, L.L.C., the lowest responsive bidder, at their total unit price bid of \$2,178,991.80.

This contract will relocate utilities to the west side of Scottsdale Road in preparation for the major widening of Scottsdale Road between Indian Bend Road and Gold Dust Blvd. A screen wall on the west side of the road will also be constructed between the Indian Bend wash and Doubletree Ranch Road.

### **Related Policies, References:**

- Intergovernmental Agreement (IGA) No. 96-0001 between City of Scottsdale (city) and Town of Paradise Valley (town) (Approved 2/5/96 by Scottsdale City Council).
- Amendment to IGA No 96-001A which established responsibilities for under grounding of the existing 69 kV electrical power line between the city and the town. (Approved 12/9/02 by Scottsdale City Council and approved 12/19/02 by Paradise Valley Town Council)
- De-annexation Ordinance (Approved 11/7/02 by Paradise Valley Town Council and approved 12/9/02 by Scottsdale City Council).

## **BACKGROUND**

This construction contract is the first of three planned contracts that will result in a major reconstruction and widening of Scottsdale Road from Indian Bend Road to Gold Dust Avenue. Construction of the entire project is currently scheduled for completion by December, 2004.

The final scope and budget for this project was established after approval of an IGA with the Town of Paradise Valley in 1996. Construction of any portion of this project has been held until the Pima Freeway was completed through the City of Scottsdale.

## **ANALYSIS & ASSESSMENT**

The widening and construction of this 2 ¾ mile length of Scottsdale Road is scheduled as follows:

Beginning in January, 2003, the existing 12 kV electrical lines and other utilities will be relocated and undergrounded along the west side of Scottsdale Road from approximately Hummingbird Lane to Berneil Drive. At the same time, a

Action Taken \_\_\_\_\_

new screen wall will be constructed along the west side of Scottsdale Road from approximately McCormick Parkway to Doubletree Ranch Road. This work will not disrupt the two existing southbound lanes of Scottsdale Road. There will be minimal traffic disruptions for crossings of Scottsdale Road, but these will be accomplished at night and on weekends. The purpose of this contract is to relocate as many of the utilities as possible in this corridor in preparation for the major widening of Scottsdale Road.

In May, 2003, a major construction contract to widen and improve Scottsdale Road between Indian Bend Road and approximately McCormick Parkway is scheduled to begin. A new bridge will be constructed over the Indian Bend Wash just south of McCormick Parkway. The underground conduit system for the 69 kV lines for this segment will be installed at this time. In order to install the underground 69 kV lines, the existing overhead 69 kV lines will need to be temporarily relocated along the east and west sides of Scottsdale Road.

In May, 2004, a second major construction contract to complete the widening of Scottsdale Road between McCormick Parkway and Gold Dust Avenue will be initiated. The undergrounding of the 69 kV line from McCormick Parkway to Doubletree Ranch Road will be installed at this time. Again, in order to achieve the undergrounding, the existing lines will need to be temporarily relocated.

**Contract process and terms:**

The Purchasing Division opened bids for this phase of the project on December 23, 2002 at 10:00 AM. Bids were received as follows:

<b>Achen-Gardner Engineering, LLC</b>	<b>\$2,178,991.80</b>
Archon, Inc.	\$2,221,186.00
Klondyke, Inc.	\$2,429,630.00
Mastek North America	\$2,603,061.00
Bison Contracting	\$2,670,395.00
Baniki Construction	\$2,739,937.00

The Purchasing Director concurs with the identification of the successful bidder and confirms that the procurement procedures provided by the City Code have been followed. The CIP Coordinator concurs that funds are available to authorize this contract.

**RESOURCE IMPACTS**

**Available funding:**

Funding is available in CIP account 410-S2707.

A total budget of \$22,469,300 has been established for this CIP project. \$2,261,680 has been expended to date for design services and right of way acquisition. Right of way expenses total \$587,785. No additional right of way expenses are planned. Approximately \$20,000,000 remains available to fund construction contracts, utility relocation costs and maintain a project contingency.

**Cost recovery options:**

Approximately \$100,000 will be recovered from utility companies in accordance with the Western Region Operating Procedures and consistent with the franchise agreements the city has with the utility companies.

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**Future budget implications:**

There will be maintenance responsibilities for the screen wall.

**Staffing, workload impact:**

The coordination of design preparation, utility impacts and project construction for the Scottsdale Road widening project is part of the available staff allocation in the Capital Project Management division.

**Maintenance requirements:**

Wall maintenance as stated above. The utility companies will maintain their facilities.

**Traffic Impact:**

No major traffic disruptions are anticipated. Restrictions may be necessary for utility crossings on Scottsdale Road, but these activities will be performed at night and on the weekends to minimize the impact to traffic.

**OPTIONS & STAFF  
RECOMMENDATION****Description of Option A:**

Do not approve this contract at this time and delay until the major contract in May 2003. This would lengthen that contract.

**Recommended approach:**

Approve this contract in order to move ahead with the overall project in the most expeditious manner.

**Proposed Next Steps:**

Staff is prepared to present construction contracts for Council consideration in accordance with the schedule referred to above.

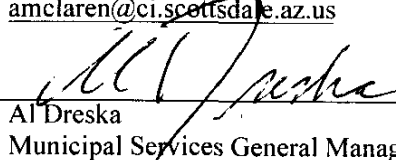
**RESPONSIBLE DEPT(S)**

Municipal Services, Capital Project Management

**STAFF CONTACT(S)**

Alex McLaren, Construction and Design Director, (480) 312-7099,  
[amclaren@ci.scottsdale.az.us](mailto:amclaren@ci.scottsdale.az.us)

**APPROVED BY**

  
Al Dreska  
Municipal Services General Manager  
[adreska@ci.scottsdale.az.us](mailto:adreska@ci.scottsdale.az.us) (480) 312-5555

12/23/02  
Date

  
Roger Klingler  
[rklingler@ci.scottsdale.az.us](mailto:rklingler@ci.scottsdale.az.us) (480) 312-5830]

12/23/02  
Date

**ATTACHMENTS**

1. Location Map





**LOCATION MAP  
SCOTTSDALE ROAD  
UTILITY / SCREEN WALL PROJECT**



# CITY COUNCIL REPORT



MEETING DATE: 01/06/2003    ITEM No. 9    GOAL: Neighborhoods

## **SUBJECT**

### **DUI arrests and related blood draw services**

## **REQUEST**

Adopt Resolution No. 6205 approving Contract No. 2002-148-COS; Approve Contract No. 2002-148-COS (Sole Source # 03SS031) between the City and Scottsdale Health Care For Blood Draw Services. Based on current and projected levels of service, contract fees are estimated to be \$49,000 per year.

### **Related Policies, References:**

## **BACKGROUND**

Under Arizona law, a person arrested for operating a motor vehicle while under the influence of alcohol or drugs is subject to the arresting officer's request to submit to breath or blood testing. A person is presumed to have unlawfully driven a vehicle while under the influence of alcohol if it is established that the person had an alcohol concentration of .08 or more within two hours of driving or being in actual physical control of the vehicle. The Scottsdale Police Department requires a person arrested for impaired driving or a person arrested for a vehicular crime while under the influence of alcohol and/or drugs to submit to a blood test. Only a physician, registered nurse, or another qualified person may withdraw an arrestee's blood to determine the alcohol concentration or drug content. In F/Y 2001/02, the Scottsdale Police Department performed a total of 1,387 DUI blood draw investigations.

## **ANALYSIS & ASSESSMENT**

### **Recent staff action.**

The City has for the past several years used Scottsdale Health Care (SHC) as the most cost effective provider of these blood draw services at its two Scottsdale locations. The use of individual phlebotomists or registered nurses as an alternative to providing these services has proven to be less reliable. Staff has now worked with SHC to draft a new agreement to memorialize the terms by which blood withdrawal services will be provided. The agreement shall be for a one-year term with an opportunity for the parties to agree to renew the arrangement for two additional one-year periods.

### **Significant issues to be addressed.**

Phlebotomists or registered nurses who are authorized to withdraw blood for DUI purposes must be available twenty-four hours a day/ seven days a week. For evidentiary purposes, blood draws should be performed as close to the time of the violation as possible. In addition, blood draw facilities should be located within the City's borders in order to minimize delays in drawing the samples and allowing the arresting officers to return to service as quickly as possible.

The City requires two levels of blood withdrawal services. The first includes

Action Taken \_\_\_\_\_

persons who have been arrested and transported to Scottsdale Health Care Osborn or Scottsdale Health Care Shea for blood draws by phlebotomists. The second level involves dispatching registered nurses to locations within the City to collect blood samples when transporting suspects to SHC facilities is not feasible. Because of these unique services and the accompanying legal and practical requirements, the Purchasing Director has determined SHC is the only practicable source for providing DUI blood withdrawal services.

**Community involvement.**

The selection of an acceptable blood withdrawal facility does not involve community outreach.

**RESOURCE IMPACTS**

**Available funding.**

Funding for necessary blood withdrawal services is available and identified as a Department budget line item. Based on current and projected levels of service, contract fees are estimated to be \$ 49,000 per year.

**Staffing, workload impact.**

Existing Police Department staff will perform contract administration services. No additional staff will be required.

**Future budget implications.**

Staff expects the average number of blood draws will meet or exceed current levels.

**OPTIONS & STAFF  
RECOMMENDATION**

**Description of Option A**

Adopt Resolution No. 6205 and approve the contract with Scottsdale Health Care. This will enable the City's Police Officers to effectively patrol the City while making the most efficient use of necessary blood draw services on DUI arrestees.

**Description of Option B:**

Staff and the Purchasing Department have determined no feasible alternative to using SHC to provide the personnel capable of conducting the volume of DUI blood withdrawal requests in a manner prescribed by law.

**RESPONSIBLE DEPT(S)**

Scottsdale Police Department

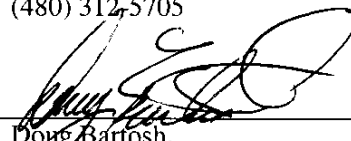
**STAFF CONTACTS**

Lt. Michael Rosenberger, District 1 PD, [mrosenberger@scottsdaleaz.gov](mailto:mrosenberger@scottsdaleaz.gov)  
(480) 312-7016

Sgt. Dave Larson, District 1 PD, [dlarson@scottsdaleaz.gov](mailto:dlarson@scottsdaleaz.gov)  
(480) 312-2418

Warren, Monroe, Purchasing Director, [mwarren@scottsdaleaz.gov](mailto:mwarren@scottsdaleaz.gov)  
(480) 312-5705

**APPROVED BY**

  
Doug Bartosh,  
Police Chief

12-19-02  
Date

  
Jan Dolan  
City Manager

12/18/02  
Date

**ATTACHMENTS**

1. Resolution No. 6205
2. Contract No. 2002-148-COS



RESOLUTION NO. 6205

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY TO APPROVE PROFESSIONAL SERVICES CONTRACT NO. 2002-148-COS (SOLE SOURCE #03SS031), WITH SCOTTSDALE HEALTH CARE FOR BLOOD DRAW SERVICES

WHEREAS, the City of Scottsdale Police Department requires the services of qualified persons to perform blood draw services in connection with investigations of drivers suspected of operating motor vehicles while under the influence of drugs or alcohol; and

WHEREAS, Scottsdale Health Care is able to provide personnel qualified to provide such blood draw services; and

WHEREAS, the City has determined Scottsdale Health Care is the only local entity capable of meeting the demand for such services under terms consistent with Police investigation requirements;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. Mayor Mary Manross is hereby authorized and directed to execute, on behalf of the City of Scottsdale, Professional Services Contract No. 2002-148-COS (Sole Source #03SS031), an agreement between the City of Scottsdale and Scottsdale Health Care for the provision of blood draw services.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Scottsdale this 6th day of January, 2003.

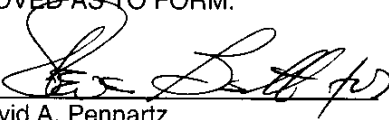
ATTEST:

CITY OF SCOTTSDALE, an  
Arizona municipal corporation

By: \_\_\_\_\_  
Sonia Robertson,  
City Clerk

By: \_\_\_\_\_  
Mary Manross,  
Mayor

APPROVED AS TO FORM:

By:   
David A. Pennartz,  
City Attorney



**CITY OF SCOTTSDALE  
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT is made and entered into this 16<sup>th</sup> day of January, 2003, by and between the City of Scottsdale, a Municipal Corporation of the State of Arizona, hereinafter referred to as "City", and Scottsdale Healthcare Osborn, an Arizona Corporation doing business at 7400 E. Osborn Road, Scottsdale, Arizona, 85251, hereinafter referred to as "Consultant".

**WITNESSETH**

THAT, the Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services;

WHEREAS, the City desires to contract for blood draws from persons who have been arrested for driving while under the influence of intoxicating liquor and/or drugs; and

WHEREAS, Consultant is duly qualified to perform the requested services;

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

**1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION**

Consultant shall act under the authority and approval of the Contract Administrator for the City, further named herein, to provide the professional services required by this Contract.

**1.1 SERVICE DESCRIPTION**

**LEVELS OF SERVICE**

**Level One Service Description:**

Using the services of a phlebotomist, the Consultant will obtain blood samples from persons who have been arrested for driving while under the influence of intoxicating liquor and/or drugs and who have been transported to Scottsdale Healthcare Osborn or Scottsdale Healthcare Shea by an officer with the Scottsdale Police Department. The Consultant agrees that a phlebotomist will be on duty and available twenty-four hours a day, seven days a week. The Consultant agrees that a physician, physician assistant, or nurse practitioner is available for consultation when a phlebotomist pursuant to this Contract draws blood. The Consultant agrees that the blood draw shall be performed in a designated area, which may vary depending upon Consultant's business operating hours. The phlebotomist, using a blood collection kit provided by the Scottsdale Police Department, will collect two blood samples. The blood collection kit will be given to the police officer in charge of the arrestee immediately after the sample has been collected. Every person consenting to a blood draw will sign a "Consent to Blood Test" form prior to the blood draw. The Scottsdale Police Department shall provide that form. The police officer shall supply the phlebotomist with a Scottsdale Police Department Report Number that must be included in the invoicing of the incident. The Scottsdale Police Officer shall fill out a form provided by The Scottsdale Police Department which details the person's name who is to have blood drawn, the date, time and location of the draw, the name of the police officer in charge of the arrestee, and the employee number of the phlebotomist who drew the blood. The phlebotomist may refuse to draw any arrestee if the arrestee is perceived to present a physical threat of harm to the phlebotomist or to any other employee or agent of Consultant.

**Level Two Service Description:** Using the services of a registered nurse, at Consultant's direction, the Consultant will respond to various locations within the City of Scottsdale and obtain blood samples from persons who have been arrested for driving while under the influence of intoxicating liquor and/or drugs. The Consultant agrees that a registered nurse will be available, on-call, twenty-four hours a day, seven days a week, but availability by Consultant to respond to

every request is not guaranteed. The Scottsdale Police Department shall notify the Consultant of the location of the arrestee as soon as practicable following the arrest. If a registered nurse is available, the Consultant shall dispatch a registered nurse to the location provided by the Scottsdale Police Department. The registered nurse shall use good faith efforts to arrive at the location of the arrestee within thirty (30) minutes of being notified by the Scottsdale Police Department. The responding registered nurse, using a blood collection kit provided by the Scottsdale Police Department, will collect two blood samples. The blood collection kit will be given to the police officer in charge of the arrestee immediately after the sample has been collected. Every person consenting to a blood draw will sign a "Consent to Blood Test" form prior to the blood draw. The Scottsdale Police Officer shall provide that form. The police officer will supply the registered nurse with a Scottsdale Police Department Report Number that must be included in the invoicing of the incident. The Scottsdale Police Officer shall also fill out a form provided by The Scottsdale Police Department which details the person's name who is to have blood drawn, the date, time and location of the draw, the name of the police officer in charge of the arrestee, and the name and employee number of the registered nurse who drew the blood. The registered nurse may refuse to draw any arrestee if the arrestee is perceived to present a physical threat of harm to the registered nurse or any other employee or agent of the Consultant.

## **1.2 ACCEPTANCE AND DOCUMENTATION**

- A. Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The City shall provide all necessary information and materials to the Consultant for timely completion of the tasks specified in Item 1.1 above.

## **2.0 BILLING RECORDS, AUDIT, FEES**

### **2.1 BILLING RECORDS, AUDIT**

Consultant shall maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and make such materials available for audit by the City pursuant to Section 4.7 of this Contract.

### **2.2 FEE SCHEDULE**

#### **Level One Service**

The amount paid to Consultant inclusive of all expenses under this Contract shall not exceed twenty-nine dollars and thirty cents (\$29.30) for each completed Level One blood draw.

#### **Level Two Service**

The amount paid to Consultant inclusive of all expenses under this Contract shall not exceed one hundred and fifty-five dollars (\$155.00) for each completed Level Two blood draw.

Amounts indicated in Section 2.2 represent the entire amounts payable under this Contract, and are inclusive of any out-of-pocket expenses incurred by the Consultant. Said out-of-pocket expenses include, but are not limited to, the following expenses: travel time to-and-from any off-site location by the registered nurse on a Level Two blood draw; all expenses, including travel expenses, expenses necessitated by court appearances, interviews and/or depositions related to any Level One or Level Two blood draw. Additional expenses will not be authorized.

### **2.3 PAYMENT APPROVAL**

All charges must be approved by the Contract Administrator prior to payment.

## **2.4 PRICE ADJUSTMENT**

Price adjustment for fees is subject to the Parties' mutual agreement and may only be requested thirty (30) days prior to the anniversary date of the Contract. Any approved price adjustment shall be in effect for a one (1) year period. No price adjustment may exceed seven (7) percent; provided, however, any request to increase the price for fees requires the concurrence of the City Council.

## **3.0 TERM, EXTENSION, TERMINATION**

### **3.1 TERM AND EXTENSION**

The term of this Contract shall be for a one-year period, and shall commence upon the date this Contract is executed by both parties. The City and Consultant may mutually agree to extend this Contract for two (2) additional one (1) year periods upon the recommendation of the Contract Administrator and concurrence of the Purchasing Director.

### **3.2 TERMINATION**

Termination for Convenience: City reserves the right to terminate this contract or any part hereof for its sole convenience with thirty (30) days written notice. As compensation in full for services performed to the date of such termination, the Consultant shall receive a fee for services actually completed.

Termination for Cause: City may also terminate this contract or any part hereof with seven (7) days notice for cause in the event of any default by the Consultant, or if the Consultant fails to comply with any of the terms and conditions of this contract. Unsatisfactory performance as judged by the Contract Administrator, and failure to provide City, upon request, with adequate assurances of future performance shall all be causes allowing City to terminate this contract for cause. In the event of termination for cause, City shall not be liable to Consultant for any amount, and Consultant shall be liable to City for any and all damages sustained by reason of the default, which gave rise to the termination.

In the event Consultant is in violation of any Federal, State, County or City law, regulation or ordinance, the City may terminate this contract immediately upon giving notice to the Consultant.

Consultant shall have the right to terminate this agreement for breach of the terms or conditions of this agreement by City if such breach is not corrected by City within seven (7) days after written notice has been presented claiming that a material breach has been committed.

### **3.3 FUNDS APPROPRIATION**

If the City Council does not appropriate funds to continue this Contract and pay for charges hereunder, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice pursuant to Section 4.11 of termination to the Consultant at least thirty (30) days prior to the end of its current fiscal period and will pay to the Consultant all approved charges incurred through the end of such period.

## **4.0 GENERAL TERMS**

### **4.1 ENTIRE AGREEMENT**

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.

### **4.2 ARIZONA LAW**

This Contract shall be governed and interpreted according to the laws of the State of Arizona.

**4.3 MODIFICATIONS**

Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract.

**4.4 ASSIGNMENT**

Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the Purchasing Director and Contract Administrator.

**4.5 SUCCESSORS AND ASSIGNS**

This Contract shall extend to and be binding upon Consultant, its successors and assigns, including any individual, company, partnership or other entity with or into which Consultant shall merge, consolidate or be liquidated, or any person, corporation, partnership or other entity to which Consultant shall sell its assets.

**4.6 CONTRACT ADMINISTRATOR**

The Contract Administrator for the City shall be Scottsdale Police Sergeant David Larson, or his designee. The Contract Administrator shall oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, and approve payments. The Consultant shall channel reports and special requests through the Contract Administrator.

**4.7 RECORDS AND AUDIT RIGHTS**

Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the City to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by City's authorized representative. The City's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

**4.8 ATTORNEY'S FEES**

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to received from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

**4.9 INDEPENDENT CONTRACTOR**

The services Consultant provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City shall not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

#### **4.10 CONFLICT OF INTEREST**

The City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. (A.R.S. §38-511).

#### **4.11 NOTICES**

All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of Consultant:

John Hoffman, Vice President  
Scottsdale Health Care Hospital  
7400 E. Osborn Road  
Scottsdale, AZ 85251  
(480) 675-4202

In the case of City:

Sergeant Dave Larson  
Scottsdale Police Department  
3700 North 75<sup>th</sup> Street  
Scottsdale, AZ 85251  
(480) 312-5000

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

#### **4.12 FORCE MAJEURE**

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

#### **4.13 TAXES**

Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The City shall have no obligation to pay any amounts for taxes, of any type, incurred by the Consultant.

#### **4.14 ADVERTISING**

No advertising or publicity concerning the City using the Consultant's services shall be undertaken without prior written approval of such advertising or publicity by the City Contract Administrator.

#### **4.15 COUNTERPARTS**

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract shall be deemed to possess the full force and effect of the original.

#### **4.16 CAPTIONS**

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

#### **4.17 INDEMNIFICATION**

To the extent responsible, Consultant, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, claims, damages (excluding punitive or exemplary damages unless permitted by law), losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

#### **5.0 INSURANCE**

This contract contains two samples of Certificates of Insurance, the Standard Acord Certificate and the Certificate developed by the City of Scottsdale.

The City Certificate is preferred, however, the Acord Certificate is acceptable provided it is identical to the sample attached and contains the additional language and deleted language as reflected on the sample.

Failure to provide a Certificate of Insurance with the appropriate verbiage as indicated on the attached samples, will result in rejection of your certificate and delay in contract execution.

**Additionally, Certificates of Insurance submitted without referencing an RFP and Contract number will be subject to rejection and returned or discarded.**

#### **5.1 Insurance Representations and Requirements**

##### **5.1.1 General:** Consultant agrees to comply with all applicable City ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to City of Scottsdale. Failure to maintain insurance as specified may result in termination of this Contract at City of Scottsdale's option.

##### **5.1.2 No Representation of Coverage Adequacy:** By requiring insurance herein, City of Scottsdale does not represent that coverage and limits will be adequate to protect Consultant. City of Scottsdale reserves the right to review any of the applicable insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed

a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

- 5.1.3 Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of subject contract are satisfactorily performed, completed and formally accepted by the City of Scottsdale, unless specified otherwise in this Contract.
- 5.1.4 Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, evidence of coverage shall be supplied to City, for three (3) years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.
- 5.1.5 Policy Deductibles and or Self Insured Retentions: The policies set forth in these requirements may provide coverage which contain deductibles or self insured retention amounts. Such deductibles or self insured retention shall not be applicable with respect to the policy limits provided to City of Scottsdale. Consultant shall be solely responsible for any such deductible or self insured retention amount.
- 5.1.6 Use of Subcontractors: If any work under this agreement is subcontracted in any way, Consultant shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting City of Scottsdale and Consultant. Consultant shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7 Evidence of Insurance: Prior to commencing any work or services under this Contract, Consultant shall furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions, and limits of coverage and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the above cited policies expire during the life of this Contract, it shall be Consultant's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:
1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies:
    - a) Commercial General Liability
    - b) Auto Liability
    - c) Excess Liability - Follow Form to underlying insurance as required.
  2. Consultant's insurance shall be primary insurance as respects performance of subject contract.
  3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Consultant under this Contract.
  4. Certificate shall cite 30 day advance notice of cancellation provision. If ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

## **5.2 Required Coverage**

- 5.2.1 Commercial General Liability: Consultant shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000

Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insured clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph. Such excess insurance shall be "follow form" equal or broader in coverage scope than underlying.

- 5.2.2 Professional Liability: If the Contract is the subject of any professional services or work, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Contract, Consultant shall maintain Professional Liability insurance covering medical negligence arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance is written on a "Claims made" basis, evidence of coverage shall be supplied to City for three (3) years past completion and acceptance of the work or services, and Consultant shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.
- 5.2.3 Vehicle Liability: Consultant shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each accident on Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Contract. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying.
- 5.2.4 Workers Compensation Insurance: Consultant shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of work or services under this Contract and shall also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

## **6.0 SEVERABILITY AND AUTHORITY**

### **6.1 SEVERABILITY**

If any term or provision of this Contract shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract shall remain in full force and effect and such term or provision shall be deemed to be deleted.

### **6.2 AUTHORITY**

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the City of Scottsdale by its Mayor and City Clerk have hereunto subscribed their names this \_\_\_\_ day of \_\_\_\_\_, 2002<sup>3</sup>.

CITY OF SCOTTSDALE

CONSULTANT:

By: 


By: \_\_\_\_\_  
Mary Manross, Mayor

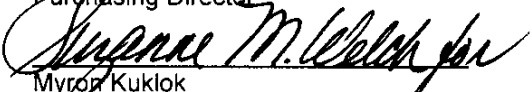
ATTEST:

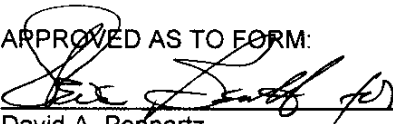
By: \_\_\_\_\_  
Sonia Robertson, City Clerk

CITY OF SCOTTSDALE REVIEW:

  
CITY CONTRACT ADMINISTRATOR

  
Monroe C. Warren  
Purchasing Director

  
Myron Kuklok  
Risk Management Director

APPROVED AS TO FORM:  
  
David A. Pernartz  
City Attorney

**CITY OF SCOTTSDALE  
CERTIFICATE OF INSURANCE**

<b>City Department:</b>	<b>Project Title:</b>	<b>Contract #:</b>		
<b>Companies Affording Coverage</b>		<b>Current State of Arizona License</b>		<b>Current A.M. Best Rating</b>
<b>Producer:</b>	A. B. C. D. E.	Yes	No	
<b>Insured:</b>		-	-	

This is to certify that the insurance policies listed below have been issued to the insured named above for the policy period indicated.

Co Ltr	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (mm/dd/yy)	POLICY EFFECTIVE DATE (mm/dd/yy)	LIMITS (,000)	
	General Liability <input type="checkbox"/> Commercial General Liability <input type="checkbox"/> Occurrence <input type="checkbox"/> Claims Made <input type="checkbox"/> Owner's & Contractor's Prot. <input type="checkbox"/> Per Project <input type="checkbox"/> Product/Completed Operations				General Aggregate Products-Comp/Op Agg. Personal & Adv. Injury Each Occurrence Fire Damage (any one fire) Med. Exp. (any one person)	\$ \$ \$ \$ \$ \$
	Automobile Liability <input type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos <input type="checkbox"/> Garage Liability				Combined Single Limit  Bodily Injury (per person) Bodily Injury (per accident) Property Damage	\$ \$ \$ \$
	Professional Liability <input type="checkbox"/> Type <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence				Each Claim All Claims	\$ \$
	Excess Liability <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Other than umbrella form <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence				Each Occurrence Aggregate	\$ \$
	Workers Compensation  Employer's Liability				Statutory Limits  Each Accident Disease-Policy Limit Disease-Each Employee	\$ \$ \$
	Builder's Risk					
	Other:					

**Description of Operations/Locations/Vehicles/Special Items:**

City of Scottsdale, its representatives, agents and employees, is an Additional Insured under Commercial General Liability ISO Form CG 20 10 11 85 or equivalent, Auto Liability ISO Form CA 20 48 or equivalent, and Excess Liability follow form to underlying coverage. All cited insurance shall be primary coverage and waive rights to recovery (subrogation), including Workers Compensation, against City of Scottsdale. No policy shall be canceled or materially changed without 30 days advance written notice. Certificate not valid unless signed by authorized representative of Insurance Company.

<b>CERTIFICATE HOLDER/ADDITIONAL INSURED</b> City of Scottsdale 9191 E. San Salvador Drive Scottsdale, AZ 85258	<b>Authorized Representative of the insurance company(ies)</b>  Signature: _____  Date: _____
--	---

<b>ACORD<sub>tm</sub></b>		<b>CERTIFICATE OF LIABILITY INSURANCE</b>				<b>DATE (MM/DD/YY)</b>		
PRODUCER		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.						
		<b>COMPANIES AFFORDING COVERAGE</b>						
		COMPANY A						
		COMPANY B						
		COMPANY C						
		COMPANY D						
INSURED								
<b>COVERAGES</b> THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.								
Co 1 tr	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (mm/dd/yy)	POLICY EXPIRATION DATE (mm/dd/yy)	LIMITS			
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> OWNERS & CONTRACTORS PROT				GENERAL AGGREGATE	\$		
					PRODUCTS COMP/OP AGG	\$		
					PERSONAL & ADV INJURY	\$		
					EACH OCCURRENCE	\$		
					FIRE DAMAGE (Any one fire)	\$		
					MED EXP (Any one person)	\$		
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT	\$		
					BODILY INJURY (Per person)	\$		
					BODILY INJURY (Per accident)	\$		
					PROPERTY DAMAGE	\$		
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO _____				AUTO ONLY EA ACCIDENT	\$		
					OTHER THAN AUTO ONLY:	\$		
					EACH ACCIDENT	\$		
					AGGREGATE	\$		
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE	\$		
					AGGREGATE	\$		
						\$		
	WORKERS COMPENSATION AND EMPLOYER'S LIABILITY THE PROPRIETOR/ <input type="checkbox"/> INCL PARTNERS/EXECUTIVE <input type="checkbox"/> EXC OFFICERS ARE. <input type="checkbox"/> L				<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">WC STATU- TORY LIMITS</td> <td style="width: 40%;">OTHER</td> </tr> </table>	WC STATU- TORY LIMITS	OTHER	
WC STATU- TORY LIMITS	OTHER							
					EL EACH ACCIDENT	\$		
					EL DISEASE - POLICY LIMIT	\$		
					EL DISEASE - EA EMPLOYEE	\$		
	Other:							

Description of Operations/Locations/Vehicles/Special Items:

City of Scottsdale, its representatives, agents and employees, is an Additional Insured under Commercial General Liability ISO Form CG 20 10 11 85 or equivalent, Auto Liability ISO Form CA 20 48 or equivalent, and Excess Liability follow form to underlying coverage. All cited insurance shall be primary coverage and waive rights of recovery (subrogation), including Workers Compensation, against City of Scottsdale. No policy shall be canceled or materially changed without 30 days advance written notice. Certificate not valid unless signed by authorized representative of insurance company. **APPLICABLE CONTRACT NUMBER:** \_\_\_\_\_

**CERTIFICATE HOLDER**

ACORD 25-S (1/95)

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL \_\_\_\_\_ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE \_\_\_\_\_

© ACORD CORPORATION 1988



# CITY COUNCIL REPORT



MEETING DATE: 01/06/2003    ITEM No. 10    GOAL: Fiscal Management

**SUBJECT**                      **Amend the City's Procurement Code to allow the Purchasing Director to use the bid solicitations of non-Arizona government entities.**

**REQUEST**                      Adopt Ordinance No. 3481, amending Code Section 2-191, Procurements from Solicitation by Other Governmental Entities, to allow the Purchasing Division to use out-of-state governmental entity contracts.

**BACKGROUND**                      The Procurement Code currently limits the City's use of cooperative buying arrangements to contracts that were awarded only by Arizona governmental entities. The City has now found several national purchasing consortiums that can offer goods at lower prices than those afforded to the City via City bids or in-state cooperative arrangements. These consortiums deal with high volumes, and most have "favored nation" provisions in their contracts. The "favored nation" provisions mean that a supplier will have to provide the very best pricing to all participants of the contract.

**ANALYSIS & ASSESSMENT**                      The Procurement Code requires the City to buy commodities from the lowest "responsible and responsive bidder". Purchasing often finds the best prices can be obtained from contracts awarded by other governmental agencies. When the Council initially adopted the Procurement Code in 1990, however, cooperative purchasing opportunities were generally limited to contracts awarded by state or local agencies. During the late 1990s, several national trade associations began to see the value of combining governmental requirements and having suppliers bid on those larger requirements. These national associations, including the National Association of Counties, the United States Conference of Mayors, and others may offer commodities at prices that are more competitive but are on terms that are as advantageous as in-state contracts. Purchasing wishes to have the ability to buy the following commodities from out-of-state consortium contracts: office supplies, office furniture, computers and peripherals, special law enforcement items available only through the Law Enforcement Federal Contracts Purchase Program (Section 1122) and other consortium opportunities that might arise.

Consistent with current City Purchasing Code Rules, the Purchasing Director would continue to confirm the procurement process used by an out-of-state entity conforms to City Code requirements and that the contractual terms are advantageous to the City.

**RESOURCE IMPACTS**

Purchasing expects use of out-of-state cooperative purchasing contracts will enable the City to save money on many purchased commodities.

**OPTIONS & STAFF  
RECOMMENDATION**

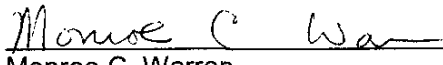
The ability to use out-of-state consortium contracts provides another purchasing tool to insure the City in receiving the best value when evaluating bid opportunities. Any purchases from these consortium contracts will be evaluated against other known sources to ensure Scottsdale is receiving the best available pricing.

If this ordinance is not adopted, the City will continue its current practice of soliciting its own bids or using contracts available only through Arizona governmental cooperative purchasing arrangements.

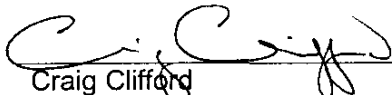
**RESPONSIBLE DEPT(S)**


Financial Services Department  
Purchasing

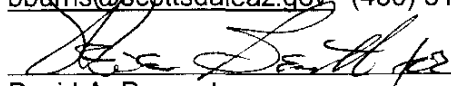
**STAFF CONTACTS**

 Dec. 13, 2002  
Date  
Monroe C. Warren  
Purchasing Director  
[mwarren@scottsdaleaz.gov](mailto:mwarren@scottsdaleaz.gov) (480) 312-5705

**APPROVED BY**

 12/17/02  
Date  
Craig Clifford  
Financial Services General Manager  
[cclifford@scottsdaleaz.gov](mailto:cclifford@scottsdaleaz.gov) (480) 312-2364

 12/17/02  
Date  
Barbara Burns  
Assistant City Manager  
[bburns@scottsdaleaz.gov](mailto:bburns@scottsdaleaz.gov) (480) 312-2599

 12/17/02  
Date  
David A. Pennartz  
City Attorney  
[dpennartz@scottsdaleaz.gov](mailto:dpennartz@scottsdaleaz.gov) (480) 312-2405

**ATTACHMENTS**

1. Ordinance No. 3481

ORDINANCE NO. 3481

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SCOTTSDALE,  
MARICOPA COUNTY, ARIZONA, AMENDING CHAPTER 2 OF THE  
SCOTTSDALE REVISED CODE, RELATING TO PROCUREMENT OF  
MATERIALS AND SERVICES PURSUANT TO CONTRACTS ISSUED  
BY OTHER GOVERNMENTAL ENTITIES

BE IT ORDAINED by the Council of the City of Scottsdale, Maricopa County,  
Arizona, as follows:

Section 1. Section 2-191 of the Scottsdale Revised Code is hereby amended to  
read as follows:

**Sec. 2-191      Procurements from Solicitations by Other Governmental Entities**

The Director may enter into contracts for the procurement of materials and services pursuant to specifications, solicitations or contracts issued by other ~~Arizona~~ governmental entities. Such purchases shall be made pursuant to established rules. The rules shall assure that such purchases conform to the purpose and spirit of this Code.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona, this  
6<sup>th</sup> day of January, 2003.

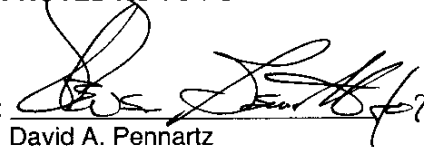
**CITY OF SCOTTSDALE,  
A municipal corporation**

By: \_\_\_\_\_  
Mary Manross, Mayor

**ATTEST:**

\_\_\_\_\_  
Sonia Robertson  
City Clerk

**APPROVED AS TO FORM:**

By:   
David A. Pennartz  
City Attorney





# CITY COUNCIL REPORT

MEETING DATE: 1-6-03

ITEM NO. 11

GOAL: Fiscal Management

## SUBJECT

### 2003/04 Mayor and City Council Mission and Goals

## REQUEST

Consider adopting the 2003/04 Mayor and City Council Mission and Goals, as updated at the October 26 and November 12, 2002 Council Workshop.

**Related Policies, References:** 2003/04 Mayor and City Council Mission and Goals (see Attachment 1).

## BACKGROUND

On October 26<sup>th</sup> and November 12<sup>th</sup>, the Mayor and City Council convened to review and reaffirm their Mission and Goal statements and to discuss key programs/efforts underway. During these sessions, the Council reaffirmed the Mission statement and made a few modifications to the goal statements, as follows:

- Goal A-Neighborhoods: No changes.
- Goal B-Preservation: No changes.
- Goal C-Transportation: No changes.
- Goal D-Economy: Slightly modified to reflect need for Scottsdale to focus on short- and long-term economic prosperity. Also, descriptive words such as stabilizing, strengthening, stimulating were added to this goal statement. (See Attachment 1)
- Goal E-Fiscal and Resource Management: Council decided to combine two goals (formerly Goals E and G) within a now revised Goal E. (See Attachment 1.)
- Goal F-Open and Responsive Government: No changes.

The Mission and Goal statements were originally created by the Council at your Fall 2000 workshop. These statements are meant to be fluid and flexible, i.e. the Council reviews and modifies them each year to ensure they reflect changing goals and priorities.

Upon approval, the Mission and Goals will be incorporated within the upcoming budget planning process, printed within City publications, and become a tool for the City Manager to ensure further alignment of City-related programming with the Council's goals and priorities for Scottsdale.

## RESOURCE IMPACTS

**Available funding.** There is no immediate fiscal impact with this proposed Council action.

**Future budget implications.** Council's approval of these Mission and Goals will direct the development of a 2003/04 program-based budget proposal. It is within

Action Taken \_\_\_\_\_

the budget discussions where the Citizens Budget Committee and the City Council will be able to more clearly understand how much of an investment (capital, maintenance and operations) is being used or may be required for various program efforts.

**OPTIONS**

**Postpone formal approval:** Council could postpone formal approval of the Mission and Goals to consider further modifications. Postponement could limit the usefulness of the organization's ability to align with and respond to these goals within the upcoming budget preparation. The next available City Council meeting would be January 21, 2003.

**Propose an amendment prior to adoption:** Council could further amend the Mission and Goals before taking action to adopt them.

**Move forward to approve Mission and Goal statements:** The Council could approve the Mission and Goals, as revised per discussions at the October 26, 2002 and November 12, 2002 Mayor and City Council Workshop.

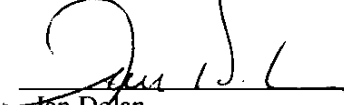
**RESPONSIBLE DEPT.**

City Manager's Office


**STAFF CONTACTS**

Natalie N. Lewis, Assistant to the City Manager, 480-312-7806,  
[nlewis@ci.scottsdale.az.us](mailto:nlewis@ci.scottsdale.az.us)

**APPROVED BY**

  
\_\_\_\_\_  
Jan Dolan  
City Manager

12/18/02  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Craig Clifford  
Chief Financial Officer

12/18/02  
\_\_\_\_\_  
Date

**ATTACHMENT**

1. Scottsdale Mayor and City Council Mission and Goals (updated per direction on October 26 and November 12, 2002).

## **Attachment 1**

# **2003/04 Mayor and Council Mission and Goals**

Updated via City Council feedback at 10/26/02 and 11/12/02 Workshop

## **Mission**

It is the mission of the City of Scottsdale to build citizen trust by fostering/practicing open, accountable, and responsive government; to provide quality services; to provide long-term prosperity; to preserve Scottsdale's unique southwestern character; to plan and manage growth in harmony with its desert surroundings; and to promote livability by enhancing and protecting its neighborhoods. Quality of life for residents and visitors shall be the paramount consideration.

## **Goals**

### **Goal A: Neighborhoods**

Enhance and protect a diverse, family-oriented community where neighborhoods are safe, protected from adverse impacts, and well maintained.

### **Goal B: Preservation**

Preserve the character and environment of Scottsdale

### **Goal C: Transportation**

Provide for the safe, efficient and affordable movement of people and goods.

### **Goal D: Economy**

Position Scottsdale for short- and long-term economic prosperity by stabilizing, promoting, strengthening, stimulating, expanding and diversifying our economic resources.

### **Goal E: Fiscal and Resource Management**

Ensure Scottsdale is fiscally responsible and fair in its management of taxpayer money and city assets, and coordinates land use and infrastructure planning within the context of financial demands and available resources.

### **Goal F: Open and Responsive Government**

Make government accessible, responsive and accountable so that pragmatic decisions reflect community input and expectations.

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**SCOTTSDALE**

# **CITY COUNCIL MEETING**

## **AGENDA**



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### **COUNCIL**

Mary Manross, Mayor

Wayne Ecton

Robert W. Littlefield

Cynthia Lukas

Ned O'Hearn

David Ortega

Tom Silverman

**Tuesday, January 7, 2003**

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**5:00 P.M.**

### **CITY COUNCIL MEETING**

**Call to Order** – City Hall Kiva Forum, 3939 N. Drinkwater Boulevard

**Roll Call**

**Pledge of Allegiance**

**Invocation**

### **Public Comment**

Citizens may complete one speaker/citizen comment card per night and submit it to the City Clerk before or during this evening's meeting. Please check the box that refers to "public comment." This "Public Comment" time is reserved for citizen comments regarding non-agendized items. No official Council action can be taken on these items.

### **Minutes**

**SPECIAL MEETINGS**

**REGULAR MEETINGS**

December 9, 2002

December 10, 2002

**EXECUTIVE SESSIONS**

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**1. Devils Martini Bar Liquor License**

**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 6 (bar) liquor license.

**Location:** 4175 N Goldwater Blvd

**Reference:** 68-LL-2002

**Staff Contact(s):** Jeff Fisher, Development Services Director, 480-312-7619,  
[jefisher@www.ScottsdaleAZ.gov](mailto:jefisher@www.ScottsdaleAZ.gov)

**2. Next Restaurant Liquor License**

**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license.

**Location:** 7111 E 5th Ave

**Reference:** 96-LL-2002

**Staff Contact(s):** Jeff Fisher, Development Services Director, 480-312-7619,  
[jefisher@www.ScottsdaleAZ.gov](mailto:jefisher@www.ScottsdaleAZ.gov)

**3. Caspian Restaurant Liquor License**

**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 7 (beer and wine) State liquor license.

**Location:** 7000 E Shea Blvd

**Reference:** 99-LL-2002

**Staff Contact(s):** Jeff Fisher, Development Services Director, 480-312-7619,  
[jefisher@www.ScottsdaleAZ.gov](mailto:jefisher@www.ScottsdaleAZ.gov)

**4. DC Ranch - Amended Development Agreement**

**Request:**

1. Approve an amendment to the DC Ranch Development Agreement No. 890074A.
2. Adopt Resolution No. 6201 authorizing the Mayor to amend Development Agreement No. 890074A

**Location:** DC Ranch

**Reference:** 54-ZN-1989#7

**Staff Contact(s):** Kurt Jones, Project Coordination Manager, 480-312-2524,  
[kjones@www.ScottsdaleAZ.gov](mailto:kjones@www.ScottsdaleAZ.gov)

**5. Hancock Homes/Madrid Development Proposal**

**Request:** To develop an eighty-five (85) lot single-family subdivision on a parcel of approximately 57 acres.

**Location:** North and south of Frank Lloyd Wright at Thunderbird Road.

**Reference:** 5-PP-2002

**Staff Contact(s):** Tim Curtis, Project Coordination Manager, 480-312-4210,  
[tcurtis@www.ScottsdaleAZ.gov](mailto:tcurtis@www.ScottsdaleAZ.gov)

**6. Sevano Village Parcel 3 Development Proposal**

**Request:** To develop a sixty four (64) lot single-family subdivision on a parcel of approximately 39 acres.

**Location:** East of the southeast corner of Dove Valley Road and Scottsdale Road (Northeast of the Scottsdale Summit Retail Center).

**Reference:** 6-PP-2002

**Staff Contact(s):** Jayna Shewak, Project Coordination Manager, 480-312-7059, [jshewak@www.ScottsdaleAZ.gov](mailto:jshewak@www.ScottsdaleAZ.gov)

**7. McDowell Mountain Business Center Rezoning and Conditional Use Permit**

**Request to approve:**

1. A rezone from Single Family Residential, Planned Commercial District (R1-35 PCD) to Industrial Park, Planned Commercial District (I-1 PCD) on a 14+/- acre parcel.
2. A conditional use permit for automotive and boat assembly and reassembly, excluding general repairs and maintenance, on 1+/- acre.
3. Adoption of Ordinance No. 3483 affirming the above rezoning.

**Location:** Southeast corner of 90th Street & Bahia Drive and southwest corner of 91st Street & Bahia Drive

**Reference:** 18-ZN-2002 & 20-UP-2002

**Staff Contact(s):** Al Ward, Senior Planner, 480-312-7067, [award@www.ScottsdaleAZ.gov](mailto:award@www.ScottsdaleAZ.gov)

**8. Fox Sport Grill Conditional Use Permit**

**Request:** Approve a conditional use permit for live entertainment in a 19,600+/- square foot building with Planned Regional Center (PRC) zoning.

**Location:** 16203 N Scottsdale Rd (Promenade Building One)

**Reference:** 21-UP-2002

**Staff Contact(s):** Bill Verschuren, Senior Planner, 480-312-7734, [bverschuren@www.ScottsdaleAZ.gov](mailto:bverschuren@www.ScottsdaleAZ.gov)

**9. Danny's Carwash – Raintree Conditional Use Permit**

**Request to approve:**

1. A conditional use permit for a new automated car wash on a 2.6 +/- acre parcel with Central Business District (C-2).
2. A conditional use permit for a new service station on a 2.6 +/- acre parcel with Central Business District (C-2).

**Location:** 8680 E Raintree Dr

**Reference:** 22-UP-2002 & 23-UP-2002

**Staff Contact(s):** Bill Verschuren, Senior Planner, 480-312-7734, [bverschuren@www.ScottsdaleAZ.gov](mailto:bverschuren@www.ScottsdaleAZ.gov)

# CONSENT AGENDA

Tuesday, January 7, 2003  
Page 4 of 5

10. **Elite Fitness Conditional Use Permit**  
**Request:** Approve a conditional use permit for a health studio on a .83 +/- acre parcel with Central Business District (C-2) zoning.  
**Location:** 7120 E Indian School Rd  
**Reference:** 24-UP-2002  
**Staff Contact(s):** Suzanne Gunderman, Senior Planner, 480-312-7087, [sgunderman@www.ScottsdaleAZ.gov](mailto:sgunderman@www.ScottsdaleAZ.gov).
11. **Scottsdale Airport Pavement Preservation Capital Project to be paid for (90%) by Arizona Department of Transportation (ADOT).**  
**Request:** Consider adoption of Resolution No. 6188 to authorize Intergovernmental Agreement (IGA) No. 2002-138-COS between ADOT and the City of Scottsdale for the purpose of conducting pavement preservation work at Scottsdale Airport proposed for fiscal year 2003/04. This work is projected to cost \$410,300.  
**Staff Contact(s):** Scott T. Gray, Aviation Director, (480) 312-7735, [sgray@ci.scottsdale.az.us](mailto:sgray@ci.scottsdale.az.us)
12. **Increase fees for users of the US Customs Service at Scottsdale Airport**  
**Request:** Consider adoption of Resolution No. 6222 to authorize revision of the Airport/Airpark Rates and Fees Schedule to increase the US Customs User Fees.  
**Related Policies, References:** Airport/Airpark Rates and Fees Schedule, Scottsdale Revised Code, Chapter 5; Contract 1999-020-COS.  
**Staff Contact(s):** Scott T. Gray, Aviation Director, (480) 312-7735, [sgray@ci.scottsdale.az.us](mailto:sgray@ci.scottsdale.az.us)
13. **Contract for Legal Services in connection with City of Scottsdale v. Ancala Global Company, L.C., et al., Superior Court Case No. CV 99-16269.**  
**Request:** Adopt Resolution No. 6223 authorizing the Mayor to execute Contract No. 2000-081A-COS, an outside counsel contract renewal in a maximum amount of Sixty Thousand Dollars (\$60,000.00) with the law firm of GRAHAM & ASSOCIATES, LTD. for legal services regarding representation of the City of Scottsdale in the litigation entitled City of Scottsdale v. Ancala Global Company, L.C., et al., Superior Court Case No. CV 99-16269, an eminent domain action brought to acquire real property for McDowell Sonoran Preserve.  
**Related Policies, References:** Resolution No. 6223.  
**Staff Contact(s):** Patrick McGreal, Assistant City Attorney, [pmcgreal@ci.scottsdale.az.us](mailto:pmcgreal@ci.scottsdale.az.us), (480) 312-2405.

**Regular Agenda begins on the following page**

14. **Consider Adopting Ordinance to Form Municipal Fire Department or Call Special Election on May 20, 2003 for a Public Vote on Forming a Municipal Fire Department. (At the request of Councilman Littlefield.)**

**Request:**

Option A. ADOPT ORDINANCE WITHOUT CALLING A SPECIAL ELECTION.

Consider Adoption of Ordinance No. 3489, amending Chapter 36 of the Scottsdale Revised Code by adding sections 36-1, 36-2 and 36-3, relating to formation of a municipal fire department.

Option B. CONSIDER CALLING SPECIAL ELECTION, FOR MAY 20, 2003.

B-1: FOR INITIATIVES IT-2002-04 AND IT-2002-05, IF THE MEASURES QUALIFY FOR THE BALLOT WITH ENOUGH VALID SIGNATURES;

Consider Adoption of Resolution No. 6230 calling a special election on Initiatives IT-2002-04 and IT-2002-05 for May 20, 2003, and approve a budget transfer from the General Fund contingency account (No. 100-99501-52890) to the City Clerk's Office elections expense account (No. 100-01035-52190) in the amount of \$150,000.00 for the estimated cost of the special election.

**OR**

B-2: FOR REFERRAL BY THE CITY COUNCIL OF BALLOT MEASURES TO THE VOTERS FOR A CHARTER AMENDMENT AND CITY CODE AMENDMENTS FOR FORMATION OF A MUNICIPAL FIRE DEPARTMENT.

Consider Adopting Ordinance No. 3490 submitting to the qualified electors of the City a charter amendment, adding Sec. 6 to Art. 4 of the Charter, requiring the creation of a municipal fire department, and

Adopt, subject to voter approval, Ordinance No. 3491, amending Chapter 36 of the Scottsdale Revised Code by adding Sections 36-1, 36-2 and 36-3, relating to formation of a municipal fire department, and

Adopt Resolution No. 6231 calling a special election on the ballot measures for May 20, 2003 and referring Ordinance No. 3490 (charter amendment) and Ordinance No. 3491 (city code amendments) to the voters for adoption or rejection, and

Approve a budget transfer from the General Fund contingency account (No. 100-99501-52890) to the City Clerk's Office elections expense account (No. 100-01035-52190) in the amount of \$150,000.00 for the estimated cost of the special election.

**Staff Contact(s):** Sonia Robertson, City Clerk, 312-2412, [srobertson@scottsdaleaz.gov](mailto:srobertson@scottsdaleaz.gov); David A. Pennartz, City Attorney, 312-2405, [dpennartz@scottsdaleaz.gov](mailto:dpennartz@scottsdaleaz.gov).

**Public Comment**

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**City Manager's Report****Mayor and Council Items****Adjournment**

Section 2.17 of the Scottsdale City Code states, "Regular Meetings that are scheduled to be conducted on consecutive days may be combined and held on either of the two (2) days, at the election of the council, and shall be considered a single meeting." The Council may hold over any items noticed on the Monday agenda to the agenda for the Tuesday meeting.

# CITY COUNCIL REPORT



MEETING DATE: January 7, 2003

ITEM NO. 1

GOAL: Preserve Character and Environment

## SUBJECT

**Liquor License Request for Devil's Martini  
68-LL-2002**

## REQUEST

To consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 6 (bar) liquor license.

## OWNER

Aurora Restaurant L.L.C.

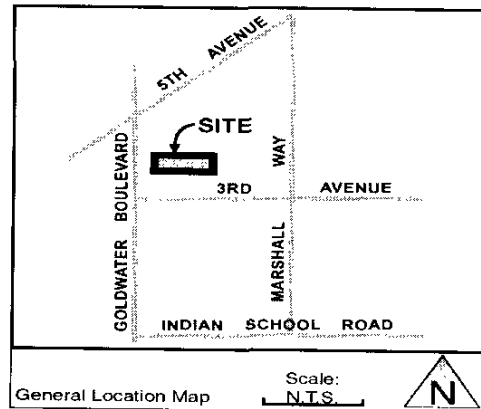
## APPLICANT CONTACT

Richard Grant Geddes  
20801 N. 90<sup>th</sup> Place #220  
Scottsdale, AZ 85255  
480-947-7171

## LOCATION

4175 N. Goldwater Boulevard

## BACKGROUND



This site is zoned (C-2) Central business district.

This is a person and location transfer of a bar license currently operating as a restaurant. An Arizona Department of Liquor Licenses and Control audit determined that this establishment is unable to meet the percentage for food sales required for a series 12 (restaurant) license and are now requiring this establishment to operate under a series 06 (bar) license. Hours of operation are 5 pm to 1 am, Thursdays, Fridays and Saturdays and they will have a full service kitchen.

The distance to the nearest school, Scottsdale Vocational School is 3200 ft.

The distance to the nearest church, First Church of Christ, is 4000 ft.

There are 98 liquor licenses within a one half-mile radius of this location.

## APPLICANT'S PROPOSAL

### Goal/Purpose of Request.

The applicant is seeking a favorable recommendation on a transfer of a series 6 (bar) liquor license. This location has operated as a restaurant/bar for numerous years. Several businesses such as Dirty Drummer, Noci Mecqa, and now Devils Martini have occupied this space. The applicant's business plan will continue to include a full service menu. The applicant has also obtained favorable support letters from adjacent business owners and operators. Those letters are attached. The applicant has maintained the required posting notice for the State mandated 20 day period.

*(Continued)*

**IMPACT ANALYSIS**

**Police/Fire.** The Police Department has conducted a review and recommends approval of this case.

**Financial Services.** Revenue Collection has reported that the applicant has met City licensing requirements and all fees have been paid.

**Parking.** Planning and Development Services has conducted a review of the parking requirements. Devil's Martini is required to provide 76 parking spaces according to the Zoning Ordinance, Café Blue, the other use on site, is required to provide 78 parking spaces. The total parking spaces required for this site is 154.

The following shows how the parking requirements are met:

48	spaces	On-site parking area
2	spaces	Credit from widening of Goldwater Boulevard
1	space	Credit from 8 bicycle parking spaces
7	spaces	Credit from Third Avenue
6	spaces	Credit from Goldwater Boulevard
3	spaces	In-lieu leased parking spaces
38	spaces	Third party parking agreement with 6939 E. 5 <sup>th</sup> Ave.
35	spaces	Third party parking agreement with 4147 N. Goldwater Blvd.
60	spaces	Third party agreement with 4110 N. Goldwater Blvd.

---

200 spaces

Staff has verified the parking credits and the third party parking agreements have been submitted and approved by the City Attorney's Office.

**Development Information.** This establishment is 6030 sq. ft.

**Code Enforcement.** Code Enforcement has conducted a review and has determined that the applicant is in compliance with the zoning ordinance.

**Maricopa County.** Maricopa County Environmental Health has reviewed this application and reported no opposition to this case.

**Community involvement.** No petitions or protests have been filed with the City Clerk during the 20 (twenty) day posting period.

**OPTIONS AND STAFF  
RECOMMENDATION**

City Council has the option of recommending approval or denial to the Arizona Department of Liquor Licenses and Control.

**Recommended Approach:** The review of this application has shown that it meets zoning, parking, and public safety requirements. Staff recommends approval.

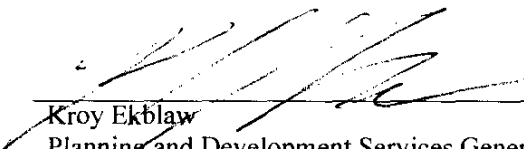
**Proposed Next Steps:** The City Council's recommendation of approval or denial will be forwarded to the Department of Liquor Licenses and Control for their consideration. If the application is approved by the

Department of Liquor Licenses and Control, the applicant should receive their license from the State within 15 days.

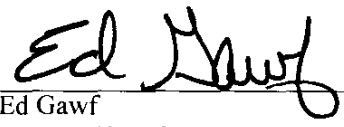
**RESPONSIBLE DEPT(S)**     **Planning and Development Services Department**

**STAFF CONTACT(S)**     Jeff Fisher  
Interim Plan Review and Permit Services Director  
480-312-7619  
E-mail: [jefisher@ci.scottsdale.az.us](mailto:jefisher@ci.scottsdale.az.us)

**APPROVED BY**

  
Kroy Ekblaw  
Planning and Development Services General Manager

12/24/02  
Date

  
Ed Gawf  
Deputy City Manager

12/24/02  
Date

**ATTACHMENTS**

- #1: Aerial Map
- #2: Vicinity Map
- #3: Application
- #4: Parking Agreement
- #5: Letters of Support





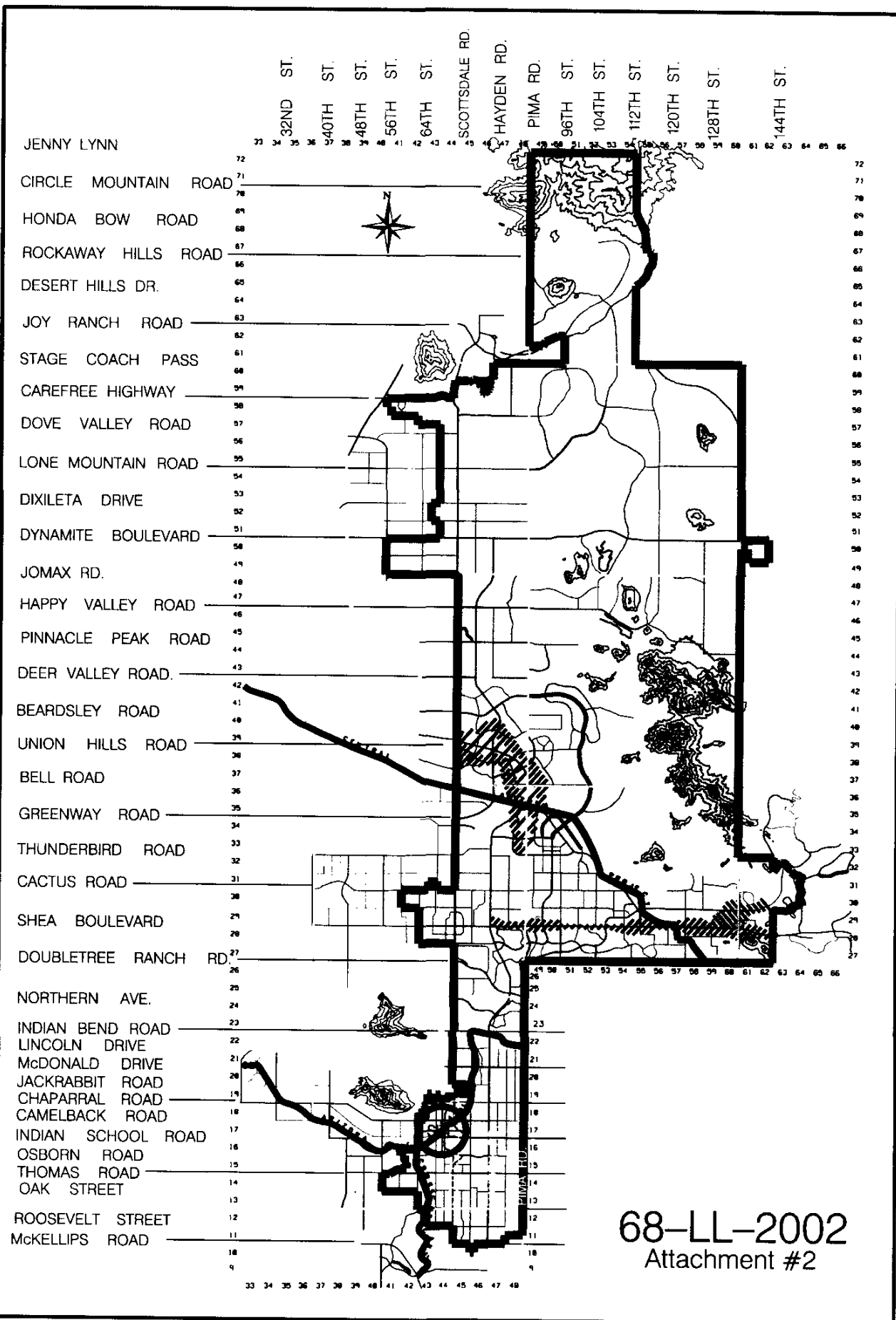
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17-44

G.I.S. ORTHOPHOTO 2000

68-LL-2002

Devil's Martini

ATTACHMENT #1



# ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141



DLCC

400 W Congress #150  
Tucson AZ 85701-1352  
(520) 628-6595

68-2602

2007 JUL 12 P 12:13  
APPLICATION FOR LIQUOR LICENSE

TYPE OR PRINT WITH BLACK INK

Notice: Effective Nov. 1, 1997, All Owners, Agents, Partners, Stockholders, Officers, or Managers actively involved in the day to day operations of the business must attend a Department approved liquor law training course or provide proof of attendance within the last five years. See page 5 of the Liquor Licensing requirements.

## SECTION 1 This application is for a:

- ☐ INTERIM PERMIT *Complete Section 5*
- ☐ NEW LICENSE *Complete Sections 2, 3, 4, 13, 14, 15, 16, 17*
- ☒ PERSON TRANSFER (Bars & Liquor Stores ONLY) *Complete Sections 2, 3, 4, 11, 13, 15, 16, 17*
- ☒ LOCATION TRANSFER (Bars and Liquor Stores ONLY) *Complete Sections 2, 3, 4, 12, 13, 15, 16, 17*
- ☐ PROBATE/WILL ASSIGNMENT/DIVORCE DECREE *Complete Sections 2, 3, 4, 9, 13, 15, 17 (fee not required)*
- ☐ GOVERNMENT *Complete Sections 2, 3, 4, 10, 13, 15, 16, 17*

## SECTION 2 Type of ownership:

- ☐ J.T.W.R.O.S. *Complete Section 6*
- ☐ INDIVIDUAL *Complete Section 6*
- ☐ PARTNERSHIP *Complete Section 6*
- ☐ CORPORATION *Complete Section 7*
- ☒ LIMITED LIABILITY CO. *Complete Section 7*
- ☐ CLUB *Complete Section 8*
- ☐ GOVERNMENT *Complete Section 10*
- ☐ TRUST *Complete Section 6*
- ☐ OTHER Explain \_\_\_\_\_

## SECTION 3 Type of license and fees:

LICENSE #: ~~12074835~~ 06070513

1. Type of License: SERIES 06 2. Total fees attached: \$ 100

**APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE.**

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

## SECTION 4 Applicant: (All applicants must complete this section)

1. Applicant/Agent's Name: Mr. GEDDES, RICHARD GRANT  
(Insert one name ONLY to appear on license) Last First Middle
2. Corp./Partnership/L.L.C.: AURORA RESTAURANT L.L.C.  
(Exactly as it appears on Articles of Inc. or Articles of Org.)
3. Business Name: DEVIL'S MARTINI  
(Exactly as it appears on the exterior of premises)
4. Business Address: 475 N. GOLDWATER BLVD SUITE 1 SCOTTSDALE MARICOPA 85251  
(Do not use PO Box Number) City County Zip
5. Business Phone: (480) 944-7171 Residence Phone: (480) 419-0871
6. Is the business located within the incorporated limits of the above city or town? ☒ YES ☐ NO
7. Mailing Address: 475 N. GOLDWATER BLVD SUITE 1 SCOTTSDALE ARIZONA 85251  
City State Zip
8. Enter the amount paid for a 06, 07, or 09 license: \$ 7000.00 (Price of License ONLY)

### DEPARTMENT USE ONLY

Accepted by: AE Date: 7/12/02 Lic. # 06070513

Fees: 200 Application Interim Permit Agent Change Club F. Prints 2400 \$ 224 TOTAL

PROCESSING APPLICATIONS TAKES APPROXIMATELY 90 DAYS, AND CIRCUMSTANCES OFTEN RESULT IN A LONGER WAITING PERIOD.  
YOU ARE CAUTIONED REGARDING PLANS FOR A GRAND OPENING, ETC., BEFORE FINAL APPROVAL AND ISSUANCE OF THE LICENSE.

**SECTION 5 Interim Permit:**

1. If you intend to operate business while your application is pending you will need an Interim Permit pursuant to A.R.S. 4-203.01.
2. There **MUST** be a valid license of the same type you are applying for currently issued to the location.
3. Enter the license number currently at the location. 2007 JUL 12 P 12:13
4. Is the license currently in use? ☐ YES ☐ NO If no, how long has it been out of use? \_\_\_\_\_

**ATTACH THE LICENSE CURRENTLY ISSUED AT THE LOCATION TO THIS APPLICATION.**

I, \_\_\_\_\_, declare that I am the CURRENT LICENSEE of the stated license and  
(Print full name)  
location. I have read this application and the contents and all statements are true, correct and complete.

X \_\_\_\_\_ State of \_\_\_\_\_ County of \_\_\_\_\_  
(Signature) The foregoing instrument was acknowledged before me this

\_\_\_\_\_ day of \_\_\_\_\_  
Day of Month Month Year

My commission expires on: \_\_\_\_\_

\_\_\_\_\_  
(Signature of NOTARY PUBLIC)

**SECTION 6 Individual or Partnership Owners:**

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 FEE FOR EACH CARD.

1. Individual:

Last	First	Middle	% Owned	Residence Address	City State Zip
			%		

Partnership Name: (Only the first partner listed will appear on license) \_\_\_\_\_

General-Limited	Last	First	Middle	% Owned	Residence Address	City State Zip
<input type="checkbox"/> <input type="checkbox"/>				%		
<input type="checkbox"/> <input type="checkbox"/>				%		
<input type="checkbox"/> <input type="checkbox"/>				%		
<input type="checkbox"/> <input type="checkbox"/>				%		

(ATTACH ADDITIONAL SHEET IF NECESSARY)

2. Is any person, other than the above, going to share in the profits/losses of the business? ☐ YES ☐ NO

## SECTION 7 Corporation/Limited Liability Co.:

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 FEE FOR EACH CARD.

- ☐ CORPORATION  
☒ L.L.C.

Complete questions 1, 2, 3, 5, 6, 7, 8.

Complete questions 1, 2, 4, 5, 6, 7 and attach copy of Articles of Org. and Operation Agreement.

1. Name of Corporation/L.L.C.: AURORA RESTAURANT L.L.C. 2002 JUL 12 P 12:13  
(Exactly as it appears on Articles of Inc. or Articles of Org.)
2. Date Incorporated/Organized: 3/16/01 State where Incorporated/Organized: ARIZONA
3. AZ Corporation Commission File No.: \_\_\_\_\_ Date authorized to do business in AZ: \_\_\_\_\_
4. AZ L.L.C. File No: L09826542 Date authorized to do business in AZ: 3/16/01
5. Is Corp./L.L.C. non-profit? ☐ YES ☒ NO If yes, give IRS tax exempt number: \_\_\_\_\_

6. List all directors/officers in Corporation/L.L.C.:

Last	First	Middle	Title	Residence Address	City State Zip
GEDDES	RICHARD	GRANT	MANAGING MEMBER	20801 N. 90TH A. APT #20	SCOTTSDALE ARIZONA 8525

(ATTACH ADDITIONAL SHEET IF NECESSARY)

7. List stockholders or controlling members owning 10% or more:

Last	First	Middle	% Owned	Residence Address	City State Zip
GEDDES	RICHARD	GRANT	100 %	20801 N. 90TH A. APT #20	SCOTTSDALE AZ 8525
			%		
			%		
			%		

(ATTACH ADDITIONAL SHEET IF NECESSARY)

8. If the corporation/L.L.C. is owned by another entity, attach an ownership, and director/officer/members disclosure for the parent entity. Attach additional sheets as necessary in order to disclose real people.

## SECTION 8 Club Applicants:

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 FEE FOR EACH CARD.

1. Name of Club: \_\_\_\_\_ Date Chartered: \_\_\_\_\_  
(Exactly as it appears on Club Charter) (Attach a copy of Club Charter)
2. Is club non-profit? ☐ YES ☐ NO If yes, give IRS tax exempt number: \_\_\_\_\_

3. List officer and directors:

Last	First	Middle	Title	Residence Address	City State Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

**SECTION 9 Probate, Will Assignment or Divorce Decree of an existing Bar or Liquor Store:**

1. Current Licensee's Name: \_\_\_\_\_  
(Exactly as it appears on license) Last First Middle
2. Assignee's Name: \_\_\_\_\_  
Last First Middle
3. License Type: \_\_\_\_\_ License Number: DLIC Date of Last Renewal: \_\_\_\_\_
4. ATTACH TO THIS APPLICATION A CERTIFIED COPY OF THE WILL, PROBATE DISTRIBUTION INSTRUMENT, OR DIVORCE DECREE THAT SPECIFICALLY DISTRIBUTES THE LIQUOR LICENSE TO THE ASSIGNEE TO THIS APPLICATION.

**SECTION 10 Government: (for cities, towns, or counties only)**

1. Person to administer this license: \_\_\_\_\_  
Last First Middle
2. Assignee's Name: \_\_\_\_\_  
Last First Middle

**A SEPARATE LICENSE MUST BE OBTAINED FOR EACH PREMISES FROM WHICH SPIRITUOUS LIQUOR IS SERVED.**

**SECTION 11 Person to Person Transfer:**

Questions to be completed by CURRENT LICENSEE (Bars and Liquor Stores ONLY).

1. Current Licensee's Name: Gams Joseph GEORGE Entity: Agent  
(Exactly as it appears on license) Last First Middle (Indiv., Agent, etc.)
2. Corporation/L.L.C. Name: Side Bar Entertainment, Inc.  
(Exactly as it appears on license)
3. Current Business Name: (code 3) CODE THREE TAVERN  
(Exactly as it appears on license)
4. Current Business Address: 2418 E. Thomas RD #20  
Phoenix, AZ 85016 (85016)
5. License Type: #6 License Number: 06070513 Last Renewal Date: 7/2002
6. Current Mailing Address (other than business): 9163 W. Union Hills, #105-58  
Peoria, AZ 85382
7. Have all creditors, lien holders, interest holders, etc. been notified of this transfer? ☒ YES ☐ NO
8. Does the applicant intend to operate the business while this application is pending? ☐ YES ☒ NO If yes, complete section 5, attach fee, and current license to this application.

9. I hereby relinquish my rights to the above described license to the applicant named in this application and hereby declare that the statements made in this section are true, correct and complete.

I, Shirley A. Larmer, declare that I am the CURRENT LICENSEE of the stated license. I have read this application and the contents and all statements are true, correct and complete.

X Shirley A. Larmer  
(Signature of CURRENT LICENSEE)

State of Arizona County of Maricopa  
The foregoing instrument was acknowledged before me this  
12 day of July, 2002.  
Day of Month Month Year

[Signature]  
(Signature of NOTARY PUBLIC)

My commission expires on: \_\_\_\_\_



STATE OF ARIZONA  
**DEPARTMENT OF LIQUOR LICENSES  
AND CONTROL**  
ALCOHOLIC BEVERAGE LICENSE

**License 06070513**

Issue Date: 2/2/2001

Expiration Date: 1/31/2003

Issued To:

JOSEPH GEORGE GAMS, Agent  
SIDE BAR ENTERTAINMENT INC, Owner

Bar

Mailing Address:

JOSEPH GEORGE GAMS  
SIDE BAR ENTERTAINMENT INC  
CODE THREE TAVERN  
5015 N 7TH AVE STE 3  
PHOENIX, AZ 85013

Location:

CODE THREE TAVERN  
2418 E THOMAS RD #20  
PHOENIX, AZ 85016

DLLC

2002 JUL 12 P 12:13

**INACTIVE**



**EXP 1/31/2003**

POST THIS LICENSE IN A CONSPICUOUS PLACE



# ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141



400 W Congress #150  
Tucson AZ 85701-1352  
(520) 628-6595

**BLLC**

## NON-JUDICIAL FORECLOSURE

2002 JUL 12 P 12:13

STATE OF ARIZONA     )  
                                  )     ss.  
COUNTY OF MARICOPA )

I, Harvey M. Yee, having been duly sworn do hereby state that:

1. I am a secured party and have a perfected security interest in Spirituous Liquor License No. \_\_\_\_\_

or

I am the attorney for the secured party who is Shirley A. Larmer

2. The financing statement with Spirituous Liquor License No. 06070513 as collateral was filed with the Secretary of State on October 25, 2000 (Copy attached).
3. Debtor, Side Bar Entertainment, Inc., is in default under the security agreement.
4. A notice of proposed disposition of collateral was sent to the debtor on June 28, 2002 at (address) 9163 W. Union Hills, #105-58, Peoria, AZ 85382 and was also filed with the Secretary of State on June 28, 2002 (Copy of notice attached)
5. ☐ Public  
A ☒ Private sale was held on 07/12/02 at (address) 3700 N. 24th St., Phoenix, AZ 85016 and the sale was in a commercially reasonable manner with notice of the sale having been published on N/A in (publication) N/A (Copy of Notice of Sale attached)
6. Spirituous Liquor License No. 06070513 was sold to Anrora Restaurant LLC of (address) 4175 N. Goldwater Blvd, Scottsdale, AZ 85251 (Copy of Bill of Sale attached)

or

Spirituous Liquor License No. \_\_\_\_\_ was retained in satisfaction of the obligation and notice was given to the debtor on \_\_\_\_\_. (Copy of notice attached)



7. Affiant further states that all things required to be done under A.R.S. Section 47-9101 et seq. (Uniform Commercial Code - Secured Transactions), have been done to enable the affiant to lawfully dispose of or otherwise act with respect to Spirituous Liquor License No. 06070513 ~~2002 JUL 12 P 12:13~~
8. Affiant further states he is aware that the Department of Liquor Licenses and Control is making no determination of the secured party's property interest in Spirituous Liquor License No. 06070513 but is relying on affiant's documentation and this affidavit solely for the purpose of allowing the affiant to take action with the Department as to Spirituous Liquor License No. 06070513
- Affiant agrees to hold the Department of Liquor Licenses and Control harmless from any liability incurred by the Department in reliance on the affiant's representations and documentation.

Wherefore, Affiant further saith not.

Harvey M. Yee, declare that I have read this Affidavit  
Print Name  
and the contents and all statements are true, correct and complete.

Harvey M. Yee  
Signature of AFFIANT

State of Arizona County of Maricopa  
The foregoing instrument was acknowledged before me this

day of July 2002  
Day of Month Month Year

My Commission expires on: \_\_\_\_\_

[Signature]  
(Signature of NOTARY PUBLIC)





PROMISSORY NOTE

BLLC

\$82,000.00

2002 JUL 12 P 12

Escrow #20-7116

Phoenix, AZ

Date: 10-13-00

For value received, Side Bar Entertainment, Inc., an Arizona Corporation, jointly and severally promise to pay in lawful money of the United States of America, to, Shirley A. Larmer, an unmarried woman, or order, at PHOENIX, ARIZONA, the sum of:

\*Eighty Two Thousand and 00/100 \*\*\*\*\*DOLLARS, in installments of \$1361.31 or more, monthly, payable on or before the 16th day of every month beginning on the 16th day of November, 2000, including interest on all unpaid principal from October 16, 2000, until paid at the rate of -10-% per annum payable monthly, the interest to be first deducted from the regular monthly installment and the balance to be applied upon the principal.

Should a default be made in the payment of any installment under this note, the entire principal sum and accrued interest shall at once become due and payable, without notice, at the option of the holder of this note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same on the event of any subsequent default.

Each maker and endorser agrees, jointly and severally, to pay all costs of collection, including a reasonable attorney's fee, if this note, including any installment payment, is not paid promptly when due and the same is given to the attorney for collection, whether suit be brought or not.

The makers and endorsers hereof jointly and severally waive diligence, demand presentment for payment and protest, and consent to the extension of time of payment of this note without notice.

THIS NOTE IS SECURED BY A CHATTEL SECURITY AGREEMENT.

Additional terms and conditions:

The Holder and Maker are aware that the existing lease has thirty seven and one-half (37.5) months remaining. A renewal option is not available at this time. If the Maker is not able to renew or extend the lease (or a new lease is not granted) then the remaining balance of the note due Holder will be voided. If Maker is granted any extension then the monthly payments will continue as scheduled until the promissory note is paid in full or until the Maker is forced to vacate the premises. Maker agrees to make sincere effort to be granted extension or new lease.

Side Bar Entertainment, Inc., an Arizona Corporation



Joseph G. Gams, President

Performance and payment under this note is guaranteed by the undersigned:



Joseph G. Gams, Individually

Accepted and approved as to form and content:



Shirley A. Larmer



**CHATTEL SECURITY AGREEMENT**

(Equipment, Consumer Goods and Fixtures, but NOT Farm Products)

**2002 CREATION OF SECURITY INTEREST**

The undersigned Debtor grants to the undersigned Secured Party a security interest in the property described in Section 2 ("Collateral") to secure all Debtor's present and future debts, obligations and liabilities of whatever nature to Secured Party ("Obligations").

**2. DESCRIPTION OF COLLATERAL**

All assets constituting or used in connection with that certain business known as, Dusty McGruders, including all right, title and interest in the business tradename, tradestyle, inventory, AZ #6 liquor license #06070513, leasehold interest and improvements, and that certain equipment per the attached exhibit 'A', which exhibit is incorporated herein by reference. Subject to a secured interest held by Dorothy Robbins.

and all accessions to, and spare and repair parts, special tools and equipment and replacements for, and all proceeds of the foregoing, and  
☐ if checked here, all equipment of the same type or kind acquired by Debtor after date, and its proceeds.

**3. WARRANTIES**

Debtor warrants:

- (a) **OWNERSHIP** - Debtor is the owner of the Collateral free of all encumbrances and security interests (except Secured Party's security interest).  
☒ (b) **PURCHASE MONEY** - If checked here, the Collateral is being acquired by Debtor with the proceeds of a loan from Secured Party which proceeds will be used for no other purpose.  
 (c) **USE AND ADDRESS** - The Collateral is used or bought for use primarily for the purpose checked below:  
☐ Personal, family or household purposes, or farming operations, and the address of Debtor's residence, is shown below Debtor's signature.  
☒ Business, and the address of Debtor's principal place of business in Arizona, or if none, Debtor's residence, is shown below Debtor's signature.  
 (d) **MOBILE EQUIPMENT** - If any Collateral is equipment of a type normally used in more than one state, Debtor's chief place of business (if other than that below Debtor's signature) is:  
 (e) **LOCATION OF COLLATERAL** - The Collateral will be kept at the address below Debtor's signature or, if not, at

2418 E. Thomas Rd., Phoenix Maricopa AZ  
 (NO. AND STREET) (CITY OR TOWN) (COUNTY) (STATE)

and such location shall not be changed without the prior written consent of Secured Party.

- (f) **FIXTURES** - If the Collateral is to be attached to real estate, the street address and legal description of such real estate is:

Same as "E" above

and the name of the record owner of such real estate is:

- (g) **CHANGES OF ADDRESSES** - Debtor shall immediately advise Secured Party in writing of any changes in addresses.

**4. PERSONS BOUND**

Each person signing this Agreement, other than Secured Party, is a Debtor, and the obligations hereunder of all Debtors are joint and several. This Agreement benefits the Secured Party, its successors and assigns, and binds the Debtor(s) and their respective heirs, personal representatives, successors and assigns.

**5. OTHER PROVISIONS**

This Agreement includes all the provisions on the reverse side.

Dated this 13th day of October 2000

Shirley A. Larmer SECURED PARTY

By

AUTHORIZED SIGNATURE

Address: 2233 N. 35th St.  
 Phoenix, AZ 85018

Side Bar Entertainment, Inc., an Arizona Co

DEBTOR

Joseph G. Gams, President

DEBTOR

Address: 5015 N. 7th Avenue #3  
 Phoenix, AZ 85013

PHONE



## ADDITIONAL SECURITY AGREEMENT PROVISIONS

### DLCC

Maintenance of Collateral. Debtor shall maintain the Collateral in good condition and repair and not permit its value to be impaired; keep it free from all liens, encumbrances and security interests (other than those created or expressly permitted by this Agreement); defend it against all claims and legal proceedings by persons other than Secured Party; pay and discharge when due all taxes, license fees, levies and other charges upon it; not sell, lease or otherwise dispose of it or permit it to become a fixture or an accession to other goods except as specifically authorized in this Agreement or in writing by the Secured Party; not permit it to be used in violation of any applicable law, regulation or policy of insurance. Loss of or damage to the Collateral shall not release Debtor from any of the Obligations.

Insurance. Debtor shall keep the Collateral and Secured Party's interest in it insured under policies with such provisions, for such amounts and by such insurers as shall be satisfactory to Secured Party from time to time, and shall furnish evidence of such insurance satisfactory to Secured Party. Debtor assigns (and directs any insurer to pay) to Secured Party the proceeds of all such insurance and any premium refund and authorizes Secured Party to endorse in the name of Debtor any instrument for such proceeds or refunds and, at the option of Secured Party, to apply such proceeds and refunds to any unpaid balance of the Obligations, whether or not due, and/or to restoration of the Collateral, returning any excess to Debtor. Secured Party is authorized, in the name of Debtor or otherwise, to make, adjust, settle claims under and/or cancel any insurance on the Collateral.

Inspection of Collateral. Secured Party is authorized to examine the Collateral wherever located at any reasonable time or times; and Debtor shall assist Secured Party in making any such inspection.

Maintenance of Security Interest. Debtor shall pay all expenses and, upon request, take any action reasonably deemed advisable by Secured Party to preserve the Collateral or to establish, determine priority of, perfect, continue perfected, terminate and/or enforce Secured Party's interest in it or rights under this Agreement.

Authority of Secured Party to Perform for Debtor. If Debtor fails to act as required by this Agreement or the Obligations, Secured Party is authorized, in Debtor's name or otherwise, to take any such action including without limitation signing Debtor's name or paying any amount so required, and the cost shall be one of the Obligations secured by this Agreement and shall be payable by Debtor upon demand with interest at the highest legal rate applicable from the date of payment by Secured Party.

Default. Upon the occurrence of one or more of the following events of default:

Nonperformance. Debtor fails to pay when due any of the Obligations, or to perform, or rectify breach of, any warranty or other undertaking by Debtor in this Agreement or the Obligations;

Inability to Perform. Debtor or a surety for any of the Obligations dies, ceases to exist, becomes insolvent or the subject of bankruptcy or insolvency proceedings;

Misrepresentation. Any warranty or representation made to induce Secured Party to extend credit to Debtor, under this Agreement or otherwise, is false in any material respect when made; or

Insecurity. Any other event which causes Secured Party, in good faith, to deem itself insecure;

all of the Obligations shall, at the option of Secured Party and without any notice or demand, become immediately payable; and Secured Party shall have all rights and remedies for default provided by the Arizona Uniform Commercial Code, as well as any other applicable law and the Obligations. With respect to such rights and remedies.

- (a) Assembling Collateral. Secured Party may require Debtor to assemble the Collateral and to make it available to Secured Party at any convenient place designated by Secured Party.
- (b) Notice of Disposition. Written notice, when required by law, sent to any address of Debtor in this Agreement at least 10 calendar days (not counting the day of sending) before the date of a proposed disposition of the Collateral is reasonable notice.
- (c) Expenses and Application of Proceeds. Debtor shall reimburse Secured Party for any expense incurred by Secured Party in protecting or enforcing its rights under this Agreement, including without limitation reasonable attorneys' fees and legal expenses and all expenses of taking possession, holding, preparing for disposition, and disposing of the Collateral. After deduction of such expenses, Secured Party may apply the proceeds of disposition to the Obligations in such order and amounts as it elects.
- (d) Waiver. Secured Party may permit Debtor to remedy any default without waiving the default so remedied, and Secured Party may waive any default without waiving any other subsequent or prior default by Debtor.

Non-Liability of Secured Party. Secured Party has no duty to protect, insure or realize upon the Collateral. Debtor releases Secured Party from any liability for any act or omission relating to the Obligations, the Collateral or this Agreement, except Secured Party's willful misconduct.

Waiver of Defenses Against Assignee. Debtor shall not assert against any assignee of Secured Party's rights under this Agreement or any of the Obligations any claim or defense Debtor may have against Secured Party.

Charging Debtor's Credit Balance. Debtor grants Secured Party, as further security for the Obligations, a security interest and lien in any credit balance and other money now or hereafter owed Debtor by Secured Party or any assignee of Secured Party and, in addition, agrees that Secured Party may, without prior notice or demand, charge against any such credit balance or other money any amount owing upon the Obligations, whether due or not.



ARIZONA-ESGROW & FINANCIAL CORP.

3700 N. 24th St., #130

Phoenix, AZ 85016

ATTN: Account Servicing

ESCROW # 20-7116

DELIC

2002 JUL 12 P 12-13

FILED

OCT 25 2000

ARIZONA SECRETARY OF STATE

01141933

RECEIVED

OCT 25 2 52 PM '00

DATED: 10-13-00

Space above this line for Recorder's use

**ARIZONA UNIFORM COMMERCIAL CODE**  
**FINANCING STATEMENT - FORM UCC-1**

1. Debtor(s) (last name first and address): Side Bar Entertainment, Inc., an Arizona Corporation 5015 N. 7th Avenue #3 Phoenix, AZ 85013	2. Secured Party(ies) and address: Larmer, Shirley A. 2233 N. 35th St. Phoenix, AZ 85018
3. Name and Address of Assignee of Secured Party(ies):	4. <input type="checkbox"/> If checked, products of collateral are also covered. 5. If the collateral is crops, the crops are growing or to be grown on the following described real estate:
6. This Financing Statement covers the following types (or items) of property: All assets constituting or used in connection with that certain business known as, Dusty McGruders, including all right, title and interest in the business tradename, tradestyle, inventory, AZ #6 liquor license #06070513, leasehold interest and improvements, and that certain equipment per the attached exhibit 'A', which exhibit is incorporated herein by reference. Subject to a secured interest held by Dorothy Robbins. and all accessions to, and spare and repair parts, special tools and equipment and replacements for, and all proceeds of the foregoing.	
7. If the collateral is: (a) goods which are or are to become fixtures; (b) timber to be cut; or (c) minerals or the like (including oil and gas), or accounts resulting from the sale thereof at the wellhead or minehead to which the security interest attaches upon extraction, the legal description of the real estate concerned is: UCC 101SP COLLAT And, this Financing Statement is to be recorded in the office where a mortgage on such real estate would be recorded. If the Debtor does not have an interest of record, the name of a record owner is: UCC 101SP TOTAL 5.00	
8. This Financing Statement is signed by the Secured Party instead of the debtor to perfect or continue perfection of a security interest in: <input type="checkbox"/> collateral already subject to a security interest in jurisdiction when it was brought into this state. <input type="checkbox"/> collateral as to which the filing has lapsed or will lapse. <input type="checkbox"/> proceeds of collateral because of a change in type or use. <input type="checkbox"/> collateral acquired after a change of name, identity or corporate structure of the Debtor.	
Side Bar Entertainment, Inc., an AZ Corp. (Use whichever is Shirley A. Larmer	



FURNITURE/FIXTURE/EQUIPMENT LIST FOR;

Kelly's Lounge

2418 E. Thomas #20

Phoenix, Arizona 85016 P 12:13

EXHIBIT "A"

<u>No.</u>	<u>Item</u>
1	#6 Liquor License (#06070513)
1	8'x10' Walk In Cooler
1	Small Refrigerator
1	Small Microwave Oven
1	Blender
1	Well Box
1	Three Compartment Sink
6	Ceiling Fans
21	Bar Stools
7	Tables
18	Chairs
3	25" TV
1	Cash Register
2	Air Conditioners
1	Alarm System



Notice of Default and Notice of Acceleration

DLLC

To: Arizona Escrow and Financial

2002 JUL 12 P 12:14

From: Shirley A. Larmer

RE: Escrow #20-7116

Promissory Note from Side Bar Entertainment, Inc. to Shirley A. Larmer  
Dated October 13, 2000 in Original Amount of \$82,000

Date: December 17 01

Notice is hereby given that Side Bar Entertainment is in default for failure to pay the installment due under the above-referenced Promissory Note for the month of November

The Promissory Note provides that the entire principal sum and accrued interest shall at once become due and payable, without notice, at the option of the holder. I hereby give notice of acceleration of the entire principal sum and accrued interest.

Shirley A. Larmer  
Shirley A. Larmer

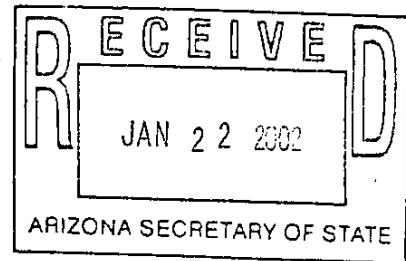


DLCC

# UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

2002 JUL 12 P 12:14



A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Shirley A. Larmer  
c/o Harvey M. Yee, Esq.  
4407 North 7th Street  
Phoenix, AZ 85014

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

01141933

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☐ ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects ☒ Debtor or ☐ Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

☒ CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. ☐ DELETE name: Give record name to be deleted in item 6a or 6b. ☐ ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

Side Bar Entertainment, Inc. 5015 N. 7th Ave., #3, Phoenix, AZ 85013

OR 6b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

Side Bar Entertainment, Inc.

OR 7b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7c. MAILING ADDRESS

9163 W. Union Hills, #105-58

CITY

Peoria

STATE

AZ

POSTAL CODE

85382

COUNTRY

USA

7d. TAX ID #: SSN OR EIN

ADDL INFO RE ORGANIZATION DEBTOR

7e. TYPE OF ORGANIZATION Corporation

7f. JURISDICTION OF ORGANIZATION

Arizona

7g. ORGANIZATIONAL ID #, if any

09649152

☐ NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned.

Notice is hereby given that the collateral set forth on Exhibit A attached will be sold at public sale on Friday, February 1, 2002 at 10:00 a.m. The public sale will be held at Arizona Escrow and Financial Corporation, 3700 North 24th Street, #130, Phoenix, AZ 85016.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR 9b. INDIVIDUAL'S LAST NAME

Larmer

FIRST NAME

Shirley

MIDDLE NAME

A.

SUFFIX

10. OPTIONAL FILER REFERENCE DATA



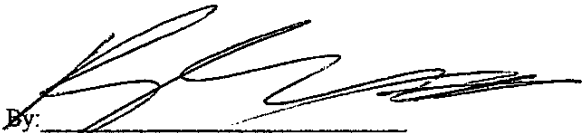
breach of default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or omission of Tenant, or any of Tenant's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses, liabilities and other claims incurred in the defense of any such claim or any action or proceeding brought thereon, and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and shall cooperate with Landlord in such defense.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement on the day and year first above written.

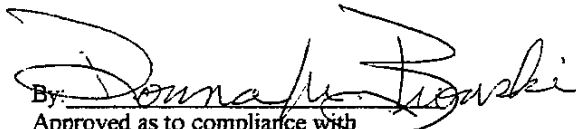
LANDLORD:  
Presson Scottsdale, LLC  
An Arizona Limited Liability Company  
By Reliance Management, LLC,  
It's Managing Agent

By:   
Wendy Windfed, Property Manager

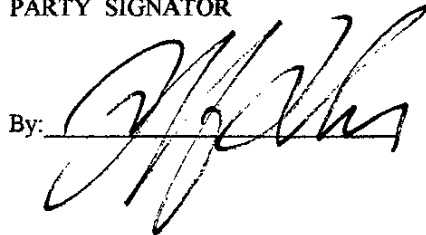
TENANT:  
Aurora Restaurant, LLC

By:   
Richard Geddes, Managing Member  
Telephone Number: 480-947-7171  
Billing Address: 4175 North Goldwater  
Boulevard, Scottsdale, Arizona 85251

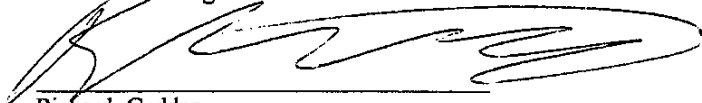
CITY ATTORNEY

By:   
Approved as to compliance with  
Section 9.107 of the Zoning Ordinance  
See David Pennartz

CITY OF SCOTTSDALE THIRD  
PARTY SIGNATOR

By: 

Aurora Restaurant, LLC, in accordance with City of Scottsdale Zoning Ordinance Section 9.107 B.2 acknowledges a cessation of use served if the access to the above mentioned leased parking is terminated without substitution of the parking spaces meeting the requirements of the City of Scottsdale Zoning Ordinance Section 9.107.

  
Richard Geddes  
Managing Member



## PARKING AGREEMENT

This Agreement is entered into this 13<sup>th</sup> day of September 2002, by and between Reliance Management, LLC an Arizona Limited Liability Company, as Agent for Presson Scottsdale, LLC an Arizona Limited Liability Company (the "Landlord") and Aurora Restaurant, LLC (the "Tenant").

As parties hereto, Landlord and Tenant agree as follows:

1. **Parking Space:** Tenant hereby rents from Landlord on the following terms and conditions, Sixty (60) parking space(s) in the building complex known as Fountain Square (the "Building") located at 4110 North Goldwater Boulevard, Scottsdale, Arizona.
2. **Term:** The term of this Agreement shall commence on September 1, 2002 and terminate August 31, 2007.
3. **Rent:**
  - a) Tenant shall pay Landlord annual rent ("Rent") without deduction, setoff, prior notice or demand the sum of \$6,000.00/yr, plus any applicable sales taxes, per month during the term of this Agreement.
  - b) Rent shall become delinquent on the tenth (10<sup>th</sup>) day of the month in which it becomes payable. Any such delinquent Rent shall automatically be subject to late charges equal to twenty percent (20%) of such rent.
4. **Notices:** Any communication with either party to this Agreement desires to serve upon Owner in care of Reliance Management. Service shall be deemed effective upon delivery of such communication.
5. **Termination:**
  - a) Either party may terminate this Agreement at any time by giving the other 30 days notice of its intent to so terminate, and termination shall be effective on the last day of the month in which such notice is given. Tenant shall pay the Rent up through the date of such termination.
  - b) If parking Tenant is also a tenant in the building and if this Agreement is not terminated as provided for in subparagraph 5a above, then this agreement shall automatically terminate on the same date as such Lease terminates.
6. **Miscellaneous:**
  - a) This Agreement does not create a lease of tenancy of any kind.
  - b) Concerning Tenant's use of said parking space(s), Landlord shall not be responsible for any damage, injury, loss or expense of any kind, including loss by fire, vandalism, acts of God or any other cause not attributable to the gross negligence of Owner or its agents.
  - c) Upon giving notice to Tenant, Landlord may relocate said parking space(s) at any time from time to time.
  - d) Tenant shall use the parking only after 5:00p.m. on Thursdays, Fridays and Saturdays, including special events.
  - e) Tenant shall clean the parking lot in the evening and in the morning after Tenants cars have vacated the parking spaces.
7. **Liability Insurance:** Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Agreement a policy of combined single limit bodily injury and property damage insurance insuring Tenant and Presson Scottsdale, LLC and Reliance Management, LLC (as additional insured) against any liability arising out of the use, occupancy or maintenance of the Premises. Such insurance shall be in the amount not less than One Million Dollars (\$1,000,000.00) per occurrence. The policy shall insure performance by Tenant of the indemnity provisions mentioned herein. The limits of said insurance shall now, however, limit the liability of Tenant hereunder.
8. **Indemnity:** Tenant shall indemnify and hold harmless from and against any and all claims arising from Tenant's use of the Premises or from the conduct of Tenant's business or from any activity, work or thing done, permitted or suffered by Tenant in or about the Premises and shall further indemnify and hold harmless Landlord from and against any and all claims arising from any





# UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as item 1a on Amendment form)

01141933

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME

Larmer

FIRST NAME

Shirley

MIDDLE NAME, SUFFIX

A. Ms.

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

DLLC

2002 JUL 12 P 12:15

## NOTIFICATION OF DISPOSITION OF COLLATERAL

To: Side Bar Entertainment, Inc.  
9163 W. Union Hills, #105-58  
Peoria, Arizona 85382

From: Shirley A. Larmer  
c/o Harvey M. Yee  
Attorney at Law  
4407 N. 7th St.  
Phoenix, AZ 85014  
(602) 274-1644

We will sell the State of Arizona Bar License, Number 06070513, sometime after June 28, 2002. You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell for a charge of \$250.00. You may request an accounting by calling us at (602) 274-1644.

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

DLCC

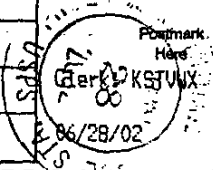
0598 5425 9000 0461 1001

**OFFICIAL USE**

PEORIA, AZ 85382

JUL 12 P 12:15

Postage	\$ 0.34	UNIT ID: 0075
Certified Fee	2.10	
Return Receipt Fee (Endorsement Required)	1.50	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 3.94	



Sent To *Side Bar Entertainment, Inc.*  
 Street, Apt. No., or PO Box No. *9163 W. Union Hills, #105-SB*  
 City, State, ZIP+4 *Peoria, AZ 85382*  
 PS Form 3800, January 2001 See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
*Side Bar Entertainment, Inc.*  
*9163 W. Union Hills, #105-SB*  
*Peoria, AZ 85382*

2. Article Number  
 (Transfer from service label)

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature *[Signature]* ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery *10/29*

D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

PS Form 3811, August 2001

Domestic Return Receipt

102595-01-M-0381

# ARIZONA DEPARTMENT OF LIQUOR LICENSING & CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141



400 W Congress #150  
Tucson AZ 85701-1352  
(520) 628-6595

AUG 10 12 32 PM '01

2002 JUL 12 P 12-16

## CERTIFICATION OF COMPLETED ALCOHOL TRAINING PROGRAM(S)

OBTAIN ORIGINALS OF THIS FORM FROM DLLC-DO NOT PHOTOCOPY, DOCUMENT IS COMPUTER SCANNED. TYPE OR PRINT WITH BLACK INK.

### ALCOHOL TRAINING PROGRAM INDIVIDUAL INFORMATION

RICHARD GRANT GEDDES

Individual Name (Print)

[Signature]

Individual Signature

8/8/01

Date Training Completed

#### TYPE OF TRAINING COMPLETED



BASIC



ON SALE



MANAGEMENT



OFF SALE



BOTH



OTHER

#### IF TRAINEE IS EMPLOYED BY A LICENSEE:

NAME OF THE LICENSEE

BUSINESS NAME

LIQUOR LICENSE NUMBER

### ALCOHOL TRAINING PROGRAM PROVIDER INFORMATION

#### ARIZONA ALCOHOL AWARENESS ASSOCIATION

Company or Individual Name

4336 NORTH 24<sup>th</sup> STREET

Address

PHOENIX

City

ARIZONA

85016

Zip

602-410-2111

Phone

I Certify the above named individual has successfully completed the specified program(s).

JERRY CRITES

Trainer Name (Print)

[Signature]

Trainer Signature

8/8/01

Date

Trainer give original of completed form to trainee. photocopy and maintain completed document for your records.

Mandatory Liquor Law Training for all new applications submitted after Nov. 1, 1997. A.R.S. Section 4-112(G)(2).

Completion of the Liquor License Training Courses is required at the issuance of a license.

The person(s) required to attend both the Basic Liquor Law and Management Training, (either on-sale or off-sale), will include all of the following : owner(s), licensee/agent or manager(s) **WHO ARE ACTIVELY INVOLVED IN THE DAY TO DAY OPERATION OF THE BUSINESS.**

Proof of attendance within the last five years for the required courses must be submitted to the Department before the license application is considered complete.


Before acceptance of a Manager's Questionnaire and/or Agent Change for an existing license, proof of attendance for the Basic Liquor Law and Management Training (either on-sale or off-sale) will be required.

DLCC

2002 JUL 12 P 12:16

The Secretary of State  
of the United States of America  
hereby requests all whom it may concern to permit the citizen/  
national of the United States named herein to pass  
without delay or hindrance and in case of need to  
give all lawful aid and protection.

Le Secrétaire d'Etat  
des Etats-Unis d'Amérique  
prie par les présentes toutes autorités compétentes de laisser passer  
le citoyen ou ressortissant des Etats-Unis titulaire du présent passeport  
sans délai ni difficulté et en cas de besoin, de lui accorder  
toute aide et protection légitimes.



SIGNATURE OF BEARER/SIGNATURE DU TITULAIRE

NOT VALID UNTIL SIGNED

PASSPORT

**USA**



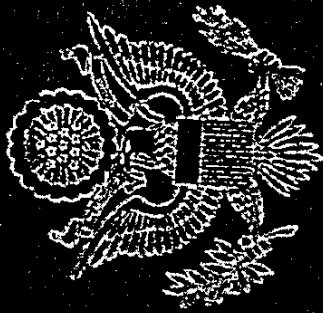
**UNITED STATES OF AMERICA**

Type/Catégorie: **P** / **Ordinary**  
Country of issuing / Pays du pays: **USA** / **États-Unis**  
Surname / Nom: **GRANT**  
Given names / Prénoms: **RICHARD**  
Nationality / Nationalité: **UNITED STATES OF AMERICA**  
Date of birth / Date de naissance: **13 AUG / AOUT 64**  
Sex / Sexe: **M** / **Male**  
Place of birth / Lieu de naissance: **CANADA**  
Authority / Autorité: **U.S. CONSULATE GENERAL**  
**TORONTO, CANADA**  
P<RICHARD GRANT

DLLC

2002 JUL 12 P 12: 16

PASSPORT



*United States  
of America*

DLLC

2002 JUL 12 P 12:16

**LICENSED ESTABLISHMENTS**

The Devil's Martini Inc.

136 Simcoe Street

Toronto, Ontario, Canada

M5H 3G4

Ontario Liquor License # 201698

Tiger Entertainment Inc.

O/A Helium Nightclub

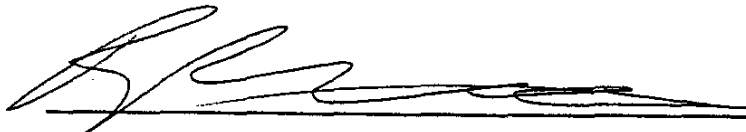
473 Adelaide Street West

Toronto, Ontario, Canada

M5V 1T1

Ontario Liquor License # 806548

Richard Grant Geddes - July 11th, 2002

A handwritten signature in black ink, appearing to read 'R. Geddes', is written over a horizontal line.

RE: ITEMS 11 AND 12

DLLC

2002 JUL 12 P 12: 16

FEBRUARY 5<sup>TH</sup>, 1991

- DRIVING OFFENCE OVER 80
- DRIVING WITH MORE THAN 80 MG OF ALCOHOL (SECTION 253B)
- TORONTO, ONTARIO, CANADA

JANUARY 9, 1996

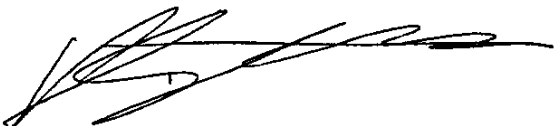
- IMPAIRED (SECTION 253A)
- TORONTO, ONTARIO, CANADA

DECEMBER 7<sup>TH</sup>, 2001

- DUI (CODE 28-1381A1)
- SCOTTSDALE, ARIZONA

RICHARD GEDDES

12-7-02



## ARIZONA DEPARTMENT OF LIQUOR LICENSES &amp; CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141



400 W Congress #150  
Tucson AZ 85701-1352  
(520) 628-6595

## QUESTIONNAIRE

Attention all Local Governing Bodies: Social Security and Birthdate Information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read Carefully, this instrument is a sworn document. Type or print with black ink. An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

There is a \$24.00 processing fee for each fingerprint card submitted.

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

Liquor License # 12074835 0607051

(If the location is currently licensed)

1. Check appropriate box →	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Partner	<input type="checkbox"/> Stockholder	<input checked="" type="checkbox"/> Member	<input type="checkbox"/> Officer	<input type="checkbox"/> Agent	<input type="checkbox"/> Manager(Only)
	<input type="checkbox"/> Other						(Complete Questions 1-20 & 24)
Licensee or Agent must complete # 25 for a Manager							Licensee or Agent must complete # 25

2. Name: GEDDES RICHARD GRANT Date of Birth: [REDACTED]  
Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: [REDACTED] Drivers License #: [REDACTED] State: ARIZONA  
(This Will Not Become a Part of Public Records)

4. Place of Birth: Toronto Ontario CANADA Height: 6' Weight: 210 Eyes: BL Hair: BR  
City State Country (not county)

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: (480) 419-0871

6. Name of Current or Most Recent Spouse: GEDDES DELANIA AURORA MUNRO Date of Birth: [REDACTED]  
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? ARIZONA If Arizona, date of residency: OCTOBER 2000

8. Telephone number to contact you during business hours for any questions regarding this document. (480) 947-7171

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: DEVIL'S MARTINI (SCOTTSDALE) Premises Phone: (480) 947-7171

11. Licensed Premises Address: 4175 N. GOLDWATER BLVD SCOTTSDALE MARICOPA 85251  
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
08/89	CURRENT	PRESIDENT	DEVILS MARTINI INC.
			136 SIMCOE ST. TORONTO CANADA
			M4N 2G1

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION <

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address If rented, attach additional sheet giving name, address and phone number of landlord	City	State	Zip
05/01	CURRENT	RENT	20801 N. 90TH R. # 270 Scottsdale	Scottsdale	AZ	85255
10/00	05/01	RENT	15440 N. 7TH ST. #146	Scottsdale	AZ	85254
10/90	10/00	OWN	1.5 BEAUMONT RD.	Toronto	ONT	M4W2Z4

6. MANAGEMENT:

Management of the Limited Liability Company is vested in the manager. The name and addresses of each person who is a manager **AND** each member who owns twenty percent or greater interest in the capital or profits of the Limited Liability Company are:

RICHARD G. GEDDES  
15440 N. 71<sup>ST</sup> Street., #146  
Scottsdale, Arizona 85254

EXECUTED this 16<sup>th</sup> day of March, 2001.

Signed: 

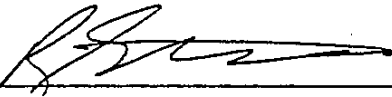
RICHARD G. GEDDES  
(Print Name)

TELEPHONE: 602 421 6372

FAX: \_\_\_\_\_

ACCEPTANCE OF APPOINTMENT OF STATUTORY AGENT

The undersigned having been designated to act as Statutory Agent, hereby consents to act in that capacity until removed or resignation is submitted in accordance with the Arizona Revised Statutes.

Signed: 

RICHARD G. GEDDES  
(Print Name)

EXPEDITED  
AZ CORP COMMISSION  
FILED

2001 MAR 16 P 3:43

APPR Jeri Little  
DATE APPR 3/16/2001  
TERM \_\_\_\_\_  
DATE \_\_\_\_\_

L-0982654-2

# ARTICLES OF ORGANIZATION

LLC

2002 JUL 12 P 12:16  
OF

## AURORA RESTAURANT, LLC.

(An Arizona Limited Liability Company)

1. NAME:

The name of the Limited Liability Company is: AURORA RESTAURANT, LLC.

2. REGISTERED OFFICE: (In Arizona)

The street address of the registered office of the Limited Liability Company in Arizona is:  
15440 N. 71<sup>ST</sup> Street, #146, Scottsdale, Arizona 85254, located in the County of Maricopa.

3. INITIAL BUSINESS:

The business of the Limited Liability Company is: providing food and beverages to the general public in a restaurant environment.

4. STATUTORY AGENT: (In Arizona)

The name and address of the Statutory Agent of the Company are:

RICHARD G. GEDDES  
15440 N. 71<sup>ST</sup> Street., #146  
Scottsdale, Arizona 85254

5. DISSOLUTION:

The latest date, if any, on which the Limited Liability Company must dissolve is:

April 15, 2026

AZ LIQ LIC

DLCC

May 1 11 53 AM '01

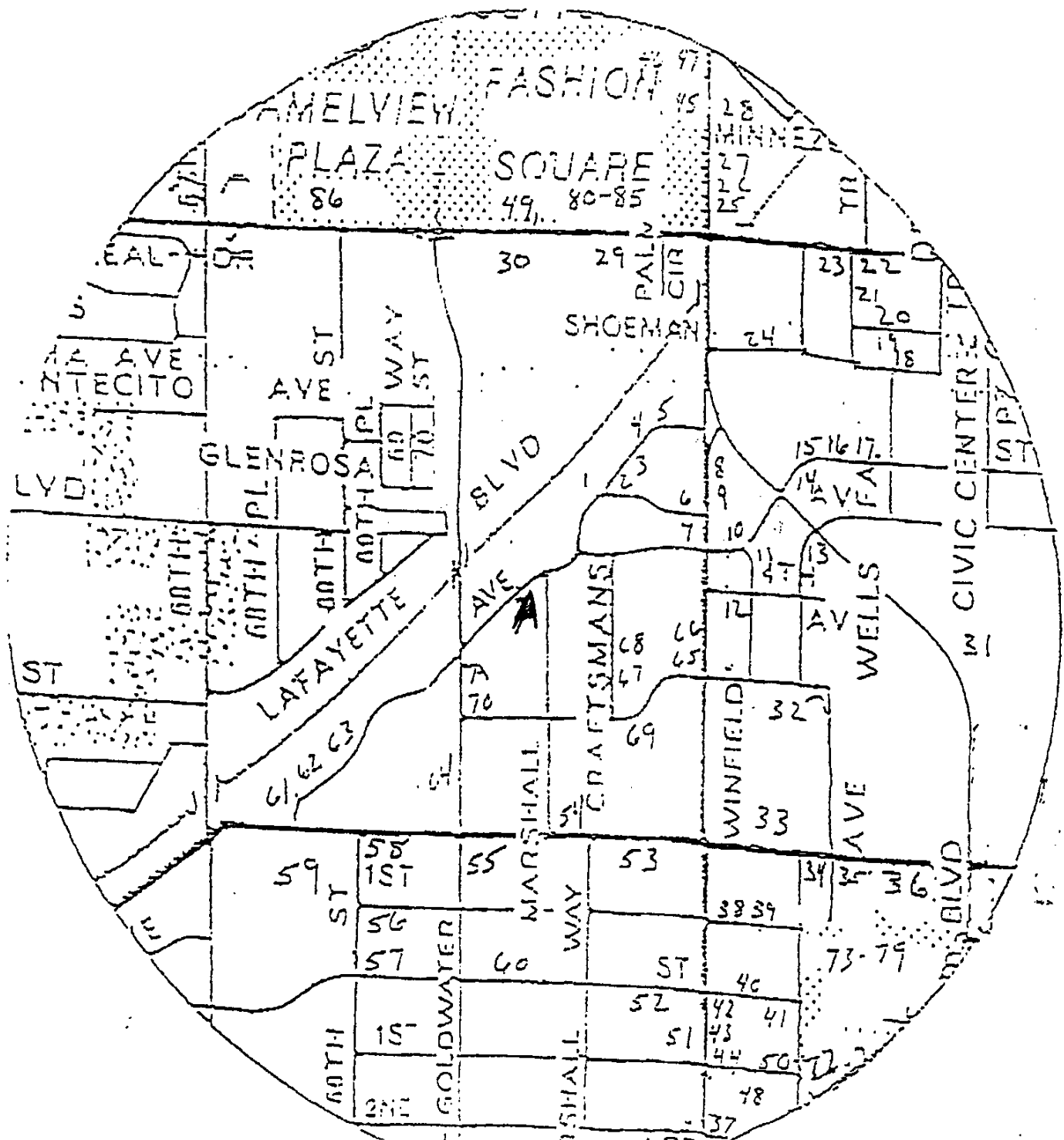
2002 JUL 12

70	12072304	Active	TUTTO	4175 GOLDWATER BLVD	85251
71	12074195	Pending	GALLERY ON 5th	7051 5TH AVENUE	85251
72	9070636	Active	MEXICAN IMPORT LIQUORS	3933 N BROWN	85251
73	5071004	Active	SCOTTSDALE CENTER FOR THE ARTS	7380 SCOTTSDALE MALL	85251
74	6070584	Active	BLUE MOOSE	7373 SCOTTSDALE MALL	85251
75	12071178	Active	AZ 88	7363 SCOTTSDALE MALL	85251
76	12071916	Active	PEPIN	7363 SCOTTSDALE MALL	85251
77	12073423	Active	MAFIA FACTORY	7373 SCOTTSDALE MALL	85251
78	12073766	Active	BACKSTAGE RESTAURANT & LOUNGE	7373 SCOTTSDALE MALL	85251
79	6070595	Active	J CHEW & COMPANY	7320 SCOTTSDALE MALL	85251
80	12071833	Active	Z TEJAS GRILL	7000 E CAMELBACK RD	85251
81	12073975	Active	FOG CITY DINER	7014 E CAMELBACK RD S	85251
82	12073976	Active	BISTECCA	7014 E CAMELBACK RD S	85251
83	12073979	Active	KONA GRILL	7014-559 E CAMELBACK R	85251
84	12073232	Active	PF CHANG'S CHINA BISTRO	7014 E CAMELBACK RD	85251
85	12073118	Closed	LA MADELEINE FRENCH BAKERY & CAFE	7014-564 E CAMELBACK R	85251
86	7070211	Active	NM CAFE	6900 E CAMELBACK RD	85251
87	14071033	Active	AMERICAN LEGION #000044 - LOC	7145 E 2ND ST	85251

36	11073045	Active	HOLIDAY INN OLD TOWN SCOTTSDALE	7353 E INDIAN SCHOOL R	85251
37	12073904	Active	RUSSELL'S ON 2ND	7210 E 1ST AVE	85251
38	6070624	Active	1ST AVENUE LOUNGE & PATIO	7220 E 1ST AVE	85251
39	12070555	Active	EMPEROR'S GARDEN	7228 E 1ST AVE	85251
40	12073222	Active	STANS KOSHER STYLE DELI	7212 E MAIN ST	85251
41	6070136	Active	RUSTY SPUR SALOON	7245 E MAIN ST	85251
42	12070116	Active	ITALIAN GROTTO	3915 N SCOTTSDALE RD	85251
43	6070709	Active	PINK PONY RESTAURANT	3831 N SCOTTSDALE RD	85251
44	12072076	Active	BANDERA	3821 N SCOTTSDALE RD	85251
45	7070653	Active	COCO'S #000021	4700 N SCOTTSDALE RD	85251
46	7070613	Active	DAYS INN SCOTTSDALE	4710 N SCOTTSDALE RD	85251
47	12073568	Active	COCO PAZZO	4720 N SCOTTSDALE RD	85251
48	12071007	Active	PISCHKE'S PARADISE	7217 E 1ST ST	85251
49	1073015	Active	HOPS BISTRO AND BREWERY	7014 E CAMELBACK RD #6	85251
49	12073892	Active	HOPS BISTRO AND BREWERY	7014 E CAMELBACK RD #6	85251
50	12071225	Active	KARSEN'S GRILL	7246 E FIRST ST #101	85251
51	12073967	Active	BUCA DI BEPPO	3828 N SCOTTSDALE RD	85251
52	12070534	Active	MALEE'S THAI GOURMET	7131 W MAIN ST	85251
53	12070294	Active	FUDDRUCKER'S	7145 E INDIAN SCHOOL R	85251
54	12073348	Active	FRANK & LUPE'S OLD MEXICO	4121 N MARSHALL WAY	85251
55	6070076	Active	COACH HOUSE TAVERN	7011 E INDIAN SCHOOL R	85251
56	7070285	Active	ARCADIA FARMS	7014 E 1ST AVE	85251
57	12073011	Active	OLD TOWN TORTILLA FACTORY	6910 E MAIN	85251
58	9070170	Active	CIRCLE K STORE #000248	6901 E INDIAN SCHOOL R	85251
59	6070379	Active	RAMADA VALLEY HO	6833 E MAIN ST	85251
60	6070179	Active	MABEL MURPHY'S	7018 E MAIN ST	85251
61	12073492	Active	TAPAS PAPA FRITA	6810 E 5TH AVE	85251
62	6070016	Active	FIFTH ESTATE	6820 5TH AVE	85251
63	12073839	Active	SUGAR SHACK	6830 E 5TH AVENUE	85251
64	4071247	Active	GOLDEN MILL COMPANY	4206 N GOLDWATER BLVD	85251
65	12070583	Active	TONY ROMA'S	4218 N SCOTTSDALE RD	85251
66	6070215	Active	VOODOO GRILL	4228 N SCOTTSDALE ROA	85251
67	12073230	Active	DOS GRINGOS	4209 N CRAFTSMAN CT	85251
68	6070449	Active	ACME BAR & GRILL	4245 N CRAFTSMAN'S CO	85251
69	6070578	Active	CAJUN HOUSE OF BLUES	7117 E 3RD AVE	85251

1	12073065	Active	MADISON'S BISTRO & BEER CO	7108 E STEETSON	85251
2	12073363	Active	COWBOY CIAO	7123 E STEETSON DR	85251
3	6070585	Active	CRAIG'S PLACE	7137 E STEETSON DR	85251
4	6070573	Active	CAT EYE LOUNGE	7164 E STEETSON DR	85251
5	12070267	Active	KYOTO RESTAURANT	7170 E STEETSON	85251
6	10073263	Active	6TH AVE BISTROT	7146 E 6TH AVE	85251
7	6070490	Active	BS WEST	7125 E 5TH AVE #30	85251
8	12073420	Active	BRAVO BISTRO	4327 N SCOTTSDALE ROA	85251
9	12072227	Active	LANDRY'S PACIFIC FISH COMPANY	4321 N SCOTTSDALE RD	85251
10	12071761	Active	TGI FRIDAYS	4343 N SCOTTSDALE RD #	85251
11	6070334	Active	GILGIN'S	4251 N WINFIELD SCOTT	85251
12	12073743	Active	LA GERIADA	4240 N WINFIELD SCOTT	85251
13	7070178	Active	CACTUS VALLEY COFFEE & PUB	4312 N BROWN AVE	85251
14	6070197	Active	GIBSONS MARTINI RANCH	7295 E STEETSON DR	85251
15	6070301	Active	ROCKIN HORSE	7316 E STEETSON	85251
16	6070796	Active	MALONEY'S	7318 E STEETSON	85251
17	6070714	Active	DJ'S OF SCOTTSDALE	7320 E STEETSON	85251
18	12070424	Active	PETTIT CAFE	7340 E SHOEMAN	85251
19	12073535	Active	JAPANESE RESTAURANT KAISHU	7333 E INDIAN PLAZA	85251
20	6070055	Active	AXIS & RADIUS	7340 INDIAN PLAZA	85251
21	12073037	Active	MUELLERS BLACK FOREST INN	4441 N BUCKBOARD TRL	85251
22	12073255	Active	JULIO'S TOO	7305 E CAMELBACK RD	85251
23	12073172	Active	ROARING FORK	7243 E CAMELBACK RD	85251
24	12071126	Active	BABY KAY'S CAJUN KITCHEN	7216 E SHOEMAN LN	85251
25	9070337	Closed	ARCADIA FINE WINE & LIQUOR	4513 N SCOTTSDALE RD	85251
26	12071307	Inactive	ROLAND'S	4515 N SCOTTSDALE RD	85251
27	6070563	Active	ELI'S BAR & GRILL	4519 N SCOTTSDALE RD	85251
28	6070620	Active	SAFARI RESORT	4611 N SCOTTSDALE RD	85251
29	12073089	Active	MIKADO	7111 E CAMELBACK RD	85251
30	12073971	Active	NORDSTROM	7705 E CAMELBACK RD	85251
31	7070678	Active	SUMMERFIELD SUITES	4245 N CIVIC CENTER PLA	85251
32	11071077	Active	MARRIOTT SUITE HOTEL	7325 E 3RD AVE	85251
33	12071010	Active	CUISINE OF INDIA JEWEL OF THE CROWN	4141 N SCOTTSDALE RD	85251
34	6070348	Active	GRAPEVINE	4013 N BROWN	85251
35	7070692	Active	JACQUELINE'S MARKET PLACE & CAFE	7303 E INDIAN SCHOOL R	85251

2002 JUL 12 P 12:15

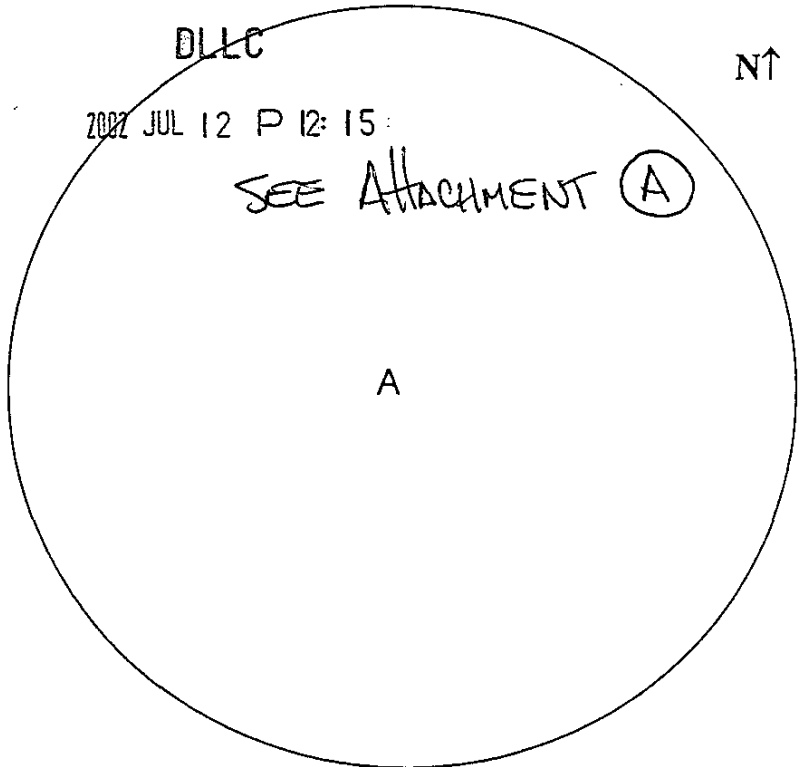


**SECTION 16 Geographical Data:** A SAMPLE FOR THIS SECTION IS PROVIDED ON THE BACK OF THIS PAGE.

List below the exact names of all churches, schools, and spirituous liquor outlets within a one half mile radius of your proposed location.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_
11. \_\_\_\_\_
12. \_\_\_\_\_
13. \_\_\_\_\_
14. \_\_\_\_\_
15. \_\_\_\_\_

(ATTACH ADDITIONAL SHEET IF NECESSARY)



A = Your business name and identify cross streets.

**SECTION 17 Signature Block:**

I, RICHARD GRANT GEDDES, declare that: 1) I am the APPLICANT (Agent/Club Member/Partner), making this  
(Print name of APPLICANT/AGENT listed in Section 4 Question 1)  
application; 2) I have read the application and the contents and all statements are true, correct and complete; 3) that this application is not  
being made to defraud or injure any creditor, taxing authority, regulatory authority, or transferor; 4) that no other person, firm, or  
corporation, except as indicated, has an interest in the spirituous liquor license for which these statements are made; and 5) that none of the  
owners, partners, members, officers, directors or stockholders listed have been convicted of a felony in the past five (5) years.

[Signature]  
(Signature)

State of Arizona County of Maricopa  
The foregoing instrument was acknowledged before me this

12 day of July, 2002  
Day of Month Month Year



[Signature]  
(Signature of NOTARY PUBLIC)

My commission expires on: \_\_\_\_\_

**SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)**

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE.

1. Current Business Name and Address: (code 3) CODE THREE TAVERN  
(Exactly as it appears on license) 2418 ELLIOT ROAD PHOENIX, AZ 85016
2. New Business Name and Address: DEKLE'S MARTINI  
(Do not use PO Box Number) 1001 JUL 12 P 12:15 SUITE 1  
4175 N. GILWATER BLVD. SCOTTSDALE 85251
3. License Type: #6 License Number: 06070513 Last Renewal Date: 7/2002
4. What date do you plan to move? upon Approval What date do you plan to open? upon Approval

**SECTION 13 Questions for all in-state applicants:**

- Distance to nearest school: 3100 ft. Name/Address of school: SCOTTSDALE VOCATIONAL SCHOOL  
(Regardless of distance) 7412 EAST INDIAN SCHOOL SCOTTSDALE AZ
- Distance to nearest church: 4000 ft. Name/Address of church: FIRST CHURCH OF CHRIST  
(Regardless of distance) 64 E. INDIAN SCHOOL SCOTTSDALE AZ
- I am the: ☒ LESSEE ☐ SUBLESSEE ☐ OWNER ☐ PURCHASER (of premises)
- If the premises is leased give lessors name and address: FLOYD INVESTMENTS LIMITED PARTNERSHIP  
6939 5TH AVENUE SCOTTSDALE ARIZONA 85251
- a. Monthly rental/lease rate \$ 6970 What is the remaining length of the lease? 3 yrs. 5 mos.
- b. What is the penalty if the lease is not fulfilled? \$ (LIFE FEES) or other MUST FULFILL LEASE 10 YR. OPTION  
(give details - attach additional sheet if necessary)
- What is the total business indebtedness of the applicant for this license/location excluding lease? \$ 50,000

Does any one creditor represent more than 10% of that sum? ☒ YES ☐ NO If yes, list below. Total must equal 100%.

Last	First	Middle	% Owed	Residence Address	City	State	Zip
WESTERN SECURITY BANK			100	7401 E. CAMELBACK RD.	SCOTTSDALE	AZ	85251

(ATTACH ADDITIONAL SHEET IF NECESSARY)

What type of business will this license be used for? (BE SPECIFIC) RESTAURANT WITH BAR

- Has a license or a transfer license for the premises on this application been denied by the state within the past one (1) year?  
☐ YES ☒ NO If yes, attach explanation.

Does any spirituous liquor manufacturer, wholesaler, or employee, have any interest in your business? ☐ YES ☒ NO

Is the premises currently licensed with a liquor license? ☒ YES ☐ NO If yes, give license number and licensee's name:

License # 12074835 (Exactly as it appears on license) Name RICHARD GEDDES

# Bill of Sale

DLLC

IN CONSIDERATION OF THE SUM OF:

2002 JUL 12 P 12:15

\*\*\*\*Seventy Thousand and 00/100\*\*\*\*\*DOLLARS

lawful currency of the United States of America, and other valuable consideration, receipt of which is hereby acknowledged, the SELLER:

Shirley Larmer, a single woman

hereby grants, bargains, sells and transfers unto the BUYER:

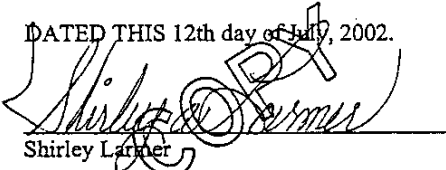
Aurora Restaurant, L.L.C., an Arizona Limited Liability Company

and his, her or their heirs, personal representatives, or assigns, to have and to hold forever, the following described personal property, goods or chattels:

State of Arizona, Series #6 Liquor License, #06070513

FURTHERMORE, Seller warrants that he, she or they are the lawful owner of said goods and hereby certifies, under oath, that he, she or they have good right to sell the same as aforesaid, and that the above described property is free and clear of all claims, liens and other encumbrances whatsoever, EXCEPT, as specified herein. Seller further agrees to warrant and defend same against the lawful claims and demands of all persons whomsoever.

DATED THIS 12th day of July, 2002.

  
Shirley Larmer

STATE OF ARIZONA        )   ACKNOWLEDGMENT  
COUNTY OF MARICOPA    )

Acknowledged before me on this 12th day of July, 2002, by Shirley Larmer.

  
NOTARY PUBLIC

E#22-9687



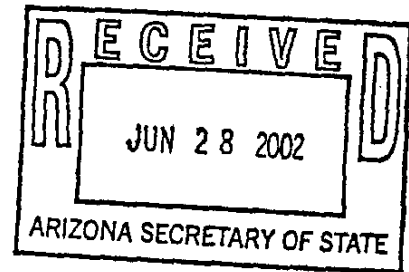
# UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional) 2002 JUL 12 P 12:15

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Shirley A. Larmer  
c/o Harvey M. Yee, Esq.  
4407 N. 7th St.  
Phoenix, AZ 85014



THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

01141933

Disposition of collateral

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☐ ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

☐ CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. ☐ DELETE name: Give record name to be deleted in item 6a or 6b. ☐ ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

Side Bar Entertainment, Inc.

OR 6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR 7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

7c. MAILING ADDRESS

9163 W. Union Hills, #105-58

CITY

Peoria

STATE

AZ

POSTAL CODE

85382

COUNTRY

USA

7d. TAX ID #: SSN OR EIN

ADD'L INFO RE ORGANIZATION DEBTOR

7e. TYPE OF ORGANIZATION corporation

7f. JURISDICTION OF ORGANIZATION

Arizona

7g. ORGANIZATIONAL ID #, if any

09649152

☐ NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR 9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
Larmer	Shirley	A.	Ms.

10. OPTIONAL FILER REFERENCE DATA

HARVEY M. YEE  
ATTORNEY AT LAW

440 N. 1st Street

Phoenix, Arizona 85014

2002 JUL 12 5 12:15  
Tel: (602) 274-1644  
Fax: (602) 274-1673

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: (480) 607-7300

To: George H. Smith, Esq.

Of: BERK & MOSKOWITZ

From: Harvey M. Yee, Esq.

Client/Matter: Larmer vs. Side Bar Entertainment, Inc.

Date: June 28, 2002

DOCUMENTS	NUMBER OF PAGES*
UCC3 Disposition of Collateral	2

COMMENTS: I received no follow-up to your most recent call, i.e., I did not receive a written offer from your client to purchase the license and I did not receive any information that your client has filed the missing monthly sales tax reports. My client is proceeding to have the bar license sold by a license broker.

\* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY

FROM : RG Investments

FAX NO. : 4809629775

Jun. 28 2002 03:10PM P1

JANCO WEST

6029783330

P.01

**Addendum "B - 1"**

\*\*\*\*\*THIS REPLACES ADDENDUM "B" DATED  
6/27/2002 WHICH IS NULL & VOID.

Broker/Manager Initials	<i>[Signature]</i>
Date	6/28/02

<b>NOTICE:</b>	This section must be filled out by the local office.
Company Name	Janco West
Office Address	17457 N. 63rd Drive
City, State, Phone	Glendale, AZ 85308 (602)978-3313

To a certain contract dated June 12, 2002 Identified below between:  
Aurora Restaurant, LLC, Richard Geddes, Managing Member

and: Shirley Larner as Seller

on that business known as: #6 Liquor License (06070513)

and located at: Maricopa County, Arizona  
(City, County, State, Zip)

This ADDENDUM is executed this 28<sup>TH</sup> day of JUNE 2002 and shall constitute an integral part of the  
☐ Listing Agreement

☒ Offer for Purchase and Sale of Assets, Earnest Money Receipt and Agreement

executed by the undersigned on the date thereof:

(1) Close of escrow shall be extended to July 12th, 2002 or sooner.

(2) Following close of escrow, all monies now in this escrow account, with the exception of escrow fees, City of Phoenix sales tax owed, and fees due to the Arizona Department of Liquor License and Control for renewal of license, placing the license on inactive status, and penalty fees, shall be held in escrow until this license has been approved for placement at buyer's place of business, located at 4175 N. Goldwater Blvd., Scottsdale, Az 85251, by the City of

Scottsdale, and by the Arizona Department of Liquor License and Control. In the event that this license cannot be placed at the above location, Seller shall reimburse Buyer for the amount of fees paid as outlined above, except for escrow fees.

Date: 6/28/02 At: 1:30 ☐ AM ☒ PM

Shirley Larner  
Seller  
Shirley Larner

Buyer

Date: 6/28/02 At: 3-PM ☐ AM ☒ PM

Richard Geddes, Managing  
Member, Aurora Restaurant, LLC  
Purchase

This ADDENDUM taken for Broker by:

Mary Jordan  
Agent for Broker

Date: 6/28/02 At: 12:30 ☐ AM ☒ PM

FROM : RG Investments

FAX NO. : 4609628775

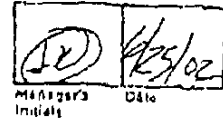
Jun. 25 2002 12:19PM P1

JANCO WEST

6029783330

P.01

## CONTINGENCY REMOVAL FORM



DATE:

6/25/02

2002 JUL 12 P 12:15

TO WHOM IT MAY CONCERN:

We, the undersigned Purchasers of that certain business known as:

SERIES #6 LIQUOR LICENSE #06070513

located at:

MARICOPA COUNTY

hereby remove the contingencies on that certain Offer to Purchase dated:

6/12/02

which reads

THIS OFFER IS CONTINGENT ONBUYER OBTAINING FINANCING BY 6/21/02

All other terms and conditions of the offer to purchase to remain the same.

A large, stylized handwritten signature in dark ink.

PURCHASER

JUNE 25 02

DATE

AURORA RESTAURANT L.L.C.RICHARD GEDDES - MAN. ME.

PURCHASER

DATE

BY:

Mary Zorda

## Addendum "A"

Broker/Manager Initials
Date

<b>NOTICE:</b> This section must be filled out by the local office.
Company Name <u>2002 JANCO WEST</u>
Office Address <u>17457 N. 63<sup>RD</sup> DR.</u>
City, State, Phone <u>GLENDALG, AZ 85308</u> <u>602-978-3313</u>

To a certain contract dated 6/12 2002, identified below between:  
AURORA REST-L.L.C. RICHARD GEDDES as MANAGING MEMBER-BUYER  
 and: SHIRLEY LARMER as SELLER  
 on that business known as: THE LIQUOR LICENSE #06070513  
 and located at: MARICOPA COUNTY, ARIZONA  
 (City, County, State, Zip)  
 This ADDENDUM is executed this 21<sup>ST</sup> day of JUNE, 2002 and shall constitute an integral part of the  
☐ Listing Agreement  
☒ Offer for Purchase and Sale of Assets, Earnest Money Receipt and Agreement  
 executed by the undersigned on the date thereof:

THE CONTINGENCY ON BUYER OBTAINING  
FINANCING SHALL BE EXTENDED TO  
6/25/02 10:00am.

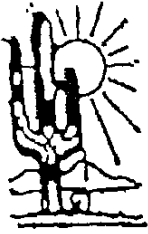
Sale: 6/20/02 4PM DAY 2 PM  
Shirley Larmar  
 Seller  
SHIRLEY LARMER  
 Seller

X Date: JUNE 21 02 3:15 ☐ AM ☒ PM  
Richard Geddes  
 Purchaser  
RICHARD GEDDES  
 Purchaser

This ADDENDUM taken for Broker by:

Mary Jordan  
 Agent for Broker

Date: 6/21/02 3:00 ☐ AM ☒ PM



JanCo West  
17457 N. 63rd Dr.  
Glendale, Arizona 85308  
(602) 978-3313

DATE: 6/22/02  
TIME: 4:10pm

2002 JUL 12 P 12:15

FAX TRANSMITTAL

FAX NUMBER: 274-1673 ATTENTION: HARVEY YEE

TOTAL PAGES: 2 SENDER: MARY ZORDAN

FAX NUMBER: (602) 978-3330

MESSAGE: TO FOLLOW - ADDENDUM

TO EXTEND CONTINGENCY UNTIL  
6/25/02 ON SHIRLEY  
LARUNER'S #6 LIP. LIC.

NOTE: IF YOU DO NOT RECEIVE ALL OF THE PAGES, OR IF YOU SHOULD HAVE ANY QUESTIONS, PLEASE CALL (602) 978-3313. THANK YOU!!!!!!

JanCo West

D LLC

Page Two

17457 N. 63rd Drive

Glendale, AZ 85308 2002 JUL 12 P 12: 14

DISCLOSURE CONTINUED RE: #06070513

SIGNATURE PAGE:

\_\_\_\_\_  
Richard Geddes, Managing Member Date  
Aurora Restaurant, LLC.

\_\_\_\_\_  
Shirley Larmer, Seller Date

\_\_\_\_\_  
Mary Zordan, Associate Broker Date  
Jan Co West

JanCo West  
17457 N. 63rd Drive  
Glendale, AZ 85308

D LLC

June 27, 2002

2002 JUL 12 P 12: 14

## DISCLOSURE

To follow are the known facts as of this date, regarding the Series #6 Liquor License in Maricopa County, (06070513) being sold to Aurora Restaurant, LLC., Richard Geddes, Managing Member, by Shirley Larmer, Seller.

(1) Said license is currently in inactive status, having been located at a bar previously sold by Shirley Larmer. After Shirley sold the bar, the new buyer/owner defaulted on the note which she then accelerated. Shirley's attorney, Harvey Yee, is in the process of filing a non judicial foreclosure to enable Shirley to reclaim the license for subsequent sale. According to Mr. Yee, this is not a lengthy process, but rather one that can be done in a matter of days.

(2) Shirley Larmer bought the bar from Dorothy Robbins, who is currently an underlying note holder on the license. At this date, Dorothy is owed approximately \$22,000 and will be reimbursed for this amount from escrow proceeds, thus giving Shirley sole ownership of the license.

(3) Known liens at present, include a sales tax and penalty lien of \$6,800, filed by the City of Phoenix. Arizona Liquor License & Control is owed renewal fees and inactive fees of approximately \$700. There are two notices of tax liens by the Arizona Department of Revenue for partial years of 1998, 1999 and 2000. No tax liens have been filed for the year 2001 by the Arizona Department of Revenue as of this date.

We continue to research pertinent information regarding this license and will inform all parties immediately as to any new information that may pertain to the sale of this license. As per our Offer To Purchase agreement, Seller remains solely responsible for any liens prior to the placement of this license.

Buyer, by signing below, acknowledges and agrees with the above information and agrees to place balance of purchase price in escrow.

Seller, by signing below, acknowledges and agrees with the above information and agrees to have her attorney expedite the non judicial foreclosure so that this sale can be consummated in a timely manner. (See Page Two)

## ADDENDUM TO DEPOSIT RECEIPT/EARNEST MONEY AGREEMENT

D.L.L.C.

**ACCOUNTS RECEIVABLE, PAYABLE, CASH:** Any and all accounts receivable, payable and cash accruing to and existing as of closing of this sale are and shall remain the sole property and responsibility of the Seller. Any and all accounts receivable, payable and cash which shall accrue immediately from and after the closing shall become the sole property and responsibility of the Buyer.

**ARBITRATION:** In the event of any dispute, subsequent to the closing of this sale, between the Buyer and Seller, under this Agreement, the parties agree to submit the matter to arbitration in accordance with the rules of the American Arbitration Association. Each party shall choose a single arbitrator and the two so chosen shall choose a third arbitrator. Legal counsel may represent either party. The decision of the arbitrators shall be final and conclusive and the right of appeal is hereby waived. Buyer shall not have the right to demand arbitration if he is in default under this Agreement for payments due on any Promissory Note or balances owed hereunder.

**AUTHORITY:** Buyer and Seller have the full power and authority to enter into this Agreement and to conclude the transaction described herein. No contract or agreement to which either Buyer or Seller is a party prevents either of them from concluding the transaction described herein, nor is the consent of any third party required therefor.

**BILL OF SALE:** Seller shall deliver to Buyer at the closing a Bill of Sale for all equipment and fixtures included in this sale, as per the Equipment List attached hereto and by reference incorporated herein, for which Seller warrants that it has good and marketable title, free and clear of all liens and encumbrances excepting any liens or encumbrances disclosed herein.

**BINDING EFFECT:** This Agreement shall bind and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the parties hereto. Upon execution by all parties this Agreement shall be absolutely binding and fully enforceable.

**BUSINESS DEPOSITS:** Any and all amounts currently on deposit for the benefit of the Business for utility services, lease, taxes, insurance, etc. are and shall remain the sole property of the Seller and shall be reimbursed to Seller at close of escrow by Buyer.

**BUSINESS INFORMATION PROVIDED TO BUYER:** It is hereby understood and acknowledged that the information recorded on the Broker's Agreement and any further information provided to Buyer by Broker was provided to Broker by Seller. Broker has not done any independent investigation whatsoever of the Business or the information provided by Seller.

**BUSINESS PREMISES:** Until possession is given, Seller agrees to maintain the Business premises, including heating, cooling, plumbing and electrical systems, built-in fixtures, together with all other equipment and assets included in this sale in working order and to maintain and leave the premises in a clean and orderly condition.

**BUSINESS RECORDS:** At the close of this sale, Seller shall deliver to Buyer all customer accounts and records, and any other documents pertinent to the Business which Seller may have. Such records shall include copies of those documents necessary to conduct business with suppliers and customers of the Business.

**BUYER'S ACKNOWLEDGEMENT:** Buyer hereby acknowledges that he is relying solely on Buyer's inspection of the Business and the representations of Seller as regards to the prior operating history of the Business, the value of the assets being purchased and all other material facts in making this offer. Buyer acknowledges that Broker has not verified and will not verify the representations of Seller. Should any such representations be untrue, Buyer agrees to look solely to Seller and to hold Broker harmless.

**BUYER'S DEFAULT:** In the event Buyer shall fail to pay the balance of cash necessary to close this transaction and to complete the purchase as herein provided within five (5) days following a written demand by Seller to do so, Seller shall be entitled to the following: (1) enforce this agreement by suit for specific performance; (2) bring an action for damages for Buyer's breach of contract, including but not limited to full recourse and recovery of Seller's loss of bargain and consequential damages, said consequential damages to include but not be limited to Seller's liability for broker's commissions and all reasonable attorney's fees incurred by Seller; (3) Cause the earnest money deposit to be forfeited; (4) Seller may prosecute any other action available at law or in equity upon any other remedy or for the recovery of any other relief available to Seller.

**CHattel SECURITY AGREEMENT:** At the close of this sale, Buyer and Seller shall enter into and execute a Chattel Security Agreement giving Seller a lien against all assets in this sale, until the Promissory Note(s) owed to Seller hereunder have been paid in full. This Chattel Security shall be subject to any existing liens described herein, if any.

**CHOICE OF LAW:** This Agreement shall be governed by and construed under the laws of the State of Arizona.

**EARNEST MONEY:** Buyer hereby instructs Broker to hold earnest money deposited for herein for deposit with the Escrow Agent until acceptance of this Agreement is executed by Seller. Seller releases Broker from any liability in accepting any uncollected earnest money deposit check of the Buyer. Broker accepts buyer's earnest money deposit subject to prior sale and Seller's executed acceptance of Buyer's offer.

**ENTIRE AGREEMENT:** This Purchase Agreement and Receipt constitutes the entire agreement and understanding of the parties hereunder and is subject to no warranties or representations not specifically set forth herein. This Agreement cannot be modified except by an instrument in writing executed by the party to be bound.

**EXECUTION AND DELIVERY OF DOCUMENTS:** Buyer and Seller shall execute and deliver all such other instruments and take all such other action as any party may reasonably request from time to time, before or after the closing, in order to effectuate the transaction provided for herein. The parties shall cooperate with each other in connection with any steps to be taken as a part of their respective obligations under this Agreement.

**INCORPORATION BY BUYER:** It is hereby acknowledged and agreed that Buyer may elect to incorporate. In such event, the new corporation shall become the Buyer, and Buyer shall cause corporation to ratify all of the terms and conditions of this Purchase Agreement. Further, Buyer hereunder shall continue to be personally liable for the payment of any unpaid balances owed to Seller herein.

**INDEMNIFICATION:** Seller does hereby indemnify Buyer and shall hold and save harmless Buyer from and against all debts, claims, actions or causes of action, losses, damages and attorney's fees, now existing or that may hereafter arise from or grow out of Seller's past operation and ownership of the Business, either directly or indirectly, excepting for those liabilities being assumed by Buyer hereunder, if any.

**LEASE:** If applicable, Buyer hereby acknowledges having previously received a copy of the current lease on Business premises. Said lease shall form a part of the Purchase Agreement. Prior to the close of escrow Buyer and Seller shall procure from Lessor a written lease agreement or Buyer shall procure a lease or sublease agreement in accordance with the terms of said lease.

**LITIGATION:** Seller represents and warrants that there is no litigation or proceedings pending, to the Seller's knowledge, against or relating to the Business or its properties. Nor does Seller know or have reasonable grounds to know of any basis of any such action or governmental investigation relative to the Business or its properties.

**LOSS/DAMAGE:** In the event there is any loss or damage to the Business premises, or any of the improvements, systems, equipment or other assets included in this sale at any time prior to the closing of this sale, the risk of loss shall be upon the Seller, immediately from and after the close of this sale, all risk of loss/damage shall be upon the Buyer.

**PRE-CLOSING CONDITIONS:** Pending the closing, Seller agrees that the business will be conducted only in the ordinary course. No increase will be made in any employee's compensation, no contract or commitment will be entered into with respect to the business without Buyer's prior written consent and Seller will use his best efforts to maintain the business intact and to preserve for Buyer the goodwill thereof. The purchase of inventory as in the customary and normal course of the business is permitted.

**SELLER'S ACKNOWLEDGEMENT:** Seller acknowledges that Broker has made no representations concerning the credit-worthiness or ability of Buyer to complete this transaction, and relies solely on Buyer's representations with respect thereto.

**SELLER WARRANTY:** Seller warrants that all outstanding liabilities of the Business, as set forth on the attached schedule, shall be paid in full on or before date of this sale. Buyer shall receive possession and control of the Business subject to any lien and/or security interest, which may be created herein but free and clear of any other encumbrances. Seller warrants that any financial information provided to Buyer is true and correct and is a fair and accurate presentation of the operation of the Business.

**SEVERABILITY:** In the event that any of the provisions or portions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions hereof, shall not be affected thereby. Effect shall be given to the intent manifested by the provisions, or portions thereof, held to be enforceable and valid.

**UNIFORM COMMERCIAL CODE-BULK TRANSFERS:** Pursuant to Article 9, UCC, and in compliance therewith, Seller shall, at the closing of this sale, prepare and deliver to Buyer and affidavit warranting that, as of the closing, the Business shall have no creditors, unless set forth herein.

BUYER'S INITIALS

BUYER'S INITIALS

SELLER'S INITIALS

SELLER'S INITIALS

## OFFER TO PURCHASE




Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: \_\_\_\_\_

1. The Buyer agrees to purchase from the Seller ~~XXXXXXXXXXXXXXXXXXXX~~ 1000 BOTTLES OF V&S VERY SPECIAL OLD SCOTCH WHISKY  
~~XXXXXXXXXXXXXXXXXXXX~~ SERIES #6 LIQUOR LICENSE  
#06070513

**Total Purchase Price**

CONSULT AN ATTORNEY. BROKER IS NOT AUTHORIZED TO GIVE LEGAL ADVICE

Telephone: 442-1111



DLLC

2002 JUL 12 P 12:14

<i>kw</i>	#0338	<i>(JL)</i>	8/1/02
Office	B.T.	Managers (Initials)	Date

## LISTING AGREEMENT

Business Type ☐ #6 LIQUOR LICENSE  
 Address MARICOPA COUNTY  
 City License # 06070513  
 Phone No. XXXXXXXXXXXXXXXXXXXX  
 Fax No. XXXXXXXXXXXXXXXXXXXX  
 dba XXXXXXXXXXXXXXXXXXXX  
 Seller's Name SHIRLEY LARMER  
 Address 2939 N. 36th Street  
 City Phoenix, AZ 85018  
 Phone No. 602-274-1644 957-4501  
 Bldg. Size XXXXXXXXXX Seats XXXXXX  
 No. Employees XXXX F.T. XXXXXX P.T.  
 Payroll \$ XXXXXX Per Month XXXXXX  
 License Required XXXXXXXXXXXXXX  
 Parking XXXXXXXXXXXXXXXXXXXX  
 Days Open XXX Closed On XXXXXXXXXX  
 Hours Open XXXXXXXXXXXXXXXXXX  
 REASON FOR SALE XXXXXXXXXXXXXXXXXX

Base Mo. Rental XXXXXX Lease Exp. Date XXXXXX  
 Option XXXXXX Cars Security on Lease \$ XXXXXX  
 Terms and Conditions XXXXXXXXXX  
 2002 JUL 12  
 Landlord XXXXXXXXXX Phone XXXXXXXXXX  
 Property Mgr. XXXXXX Phone XXXXXXXXXX  
 Estab. XXX Yrs. Pres. Owner XXX Yrs.  
 Furn., Equip. \$ XXXXXX incl. in purch. price  
 Inventory at Cost \$ XXXXXX incl. in purch. price  
 Monthly Receipts \$ XXXXXX Seller will prove  
 Monthly Net Profit \$ XXXXXX Seller will prove  
 Purchase Price \$ 70,000 Includes \$ 7,000 Comm.  
 Down Payment \$ XXXXXX Includes \$ XXXXXX Comm.  
 Seller will carry balance at \$ XXXX per month incl  
XXXXXX % interest on unpaid balance  
 Additional Terms XXXXXXXXXXXXXXXXXXXX

LIENS/ENCUMBRANCES Total \$ \*\*SEE REMARKS

Amount \$ XXX Payments \$ XXX Interest XX % Holder XXXXXX Phone XXXXXX  
 Amount \$ XXX Payments \$ XXX Interest XX % Holder XXXXXX Phone XXXXXX  
 All trade fixtures and equipment included except the following items: XXXXXXXXXXXXXXXXXXXX

REMARKS \*\*SELLER WARRANTS THAT THIS LICENSE WILL BE FREE AND CLEAR OF LIENS AND ENCUMBRANCES AT CLOSE OF ESCROW.

## SOLE AND EXCLUSIVE RIGHT TO SELL

1. The Seller hereby engages the Broker, on a sole and exclusive basis, to sell the above described property, XXXXXXXXXXXXXXXXXXXX  
 2. Seller agrees to pay Broker TEN (10 %) but in any event not less than \$ 100 of the purchase price.  
 3. Seller agrees that if this listing is cancelled or the property withdrawn from sale during the listing term by Seller, the commission shall become immediately due by Seller to Broker. If Seller refuses or is unable to comply with the listing terms for any reason, thereby preventing disposition of the property during the listing term upon the terms set forth above, the commission shall become immediately due by the Seller to the Broker.  
 4. Seller agrees that the commission shall be immediately due and payable if the Seller, directly or indirectly, enters into a Purchase and Sale Agreement (however designated) accepts a deposit or does any other act tantamount to a sale or contract to sell without the written approval of the Broker, and the cancellation or rescission of any of the foregoing acts shall not act as a release of Seller for such liability.  
 5. In any case where the deposit and/or down payment have been forfeited, this amount shall be split 50% to

Seller and 50% to Broker.

6. The Seller acknowledges that he has supplied the listing information above and Seller warrants such information to be true and correct.

7. Seller agrees to pay the full commission set forth in this Agreement to the Broker in the event the property described herein is, within one year after the termination of this Agreement, sold, traded or otherwise conveyed to anyone referred to Seller by the Broker or with whom Seller had negotiations during the term of this Agreement.

8. This Agreement shall commence on the day and year set forth below and continue until 8/1/2002

9. Should any suit be commenced to enforce the Broker's rights herein, in the event the Broker is successful the Seller agrees to pay the Broker the expenses connected therewith, including attorney's fees incurred.

10. Seller hereby acknowledges that he has read this agreement and has received a copy of it.

11. If Seller is a partnership, corporation or other entity, the person(s) signing on behalf of such entity hereby represent(s) and warrant(s) that he/she has, or they have the authority to enter into this contract on behalf of said entity.

OFFICE NAME Janco West  
 OFFICE ADDRESS Glendale, Az 85308  
 LISTING AGENT Mary Jordan

Corp. Name  
 Seller Shirley Larmer  
 Date



DLLC

2002 JUL 12 P 12:14

DLCC

2002 JUL 12 P 12:14

#06070513  
#6 Liquor License  
LBSR DATE 5/1/02  
OFFER DATE 6/12/02  
JANCO WEST  
Business Brokers  
(602) 978-3313

ADS	ADS	ADS
1 5-5-02 JANCO WEST MAY 12 12:14 PM '02	1 5/19 JANCO WEST MAY 12 12:14 PM '02	1 16/2/2002 JANCO WEST MAY 12 12:14 PM '02
2 JANCO WEST MAY 12 12:14 PM '02	2 JANCO WEST MAY 12 12:14 PM '02	2 JANCO WEST MAY 12 12:14 PM '02
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DLLC

2002 JUL 12 P 12:14

D L L C

FACSIMILE COVER SHEET 14

## BERK &amp; MOSKOWITZ

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

TELEPHONE: 480.607.7900

FIRM@BERKMOSKOWITZ.COM

FACSIMILE: 480.607.7300

WWW.BERKMOSKOWITZ.COM

January 30, 2002

PLEASE DELIVER TO:

NAME	COMPANY	FAX NUMBER
Harvey Yee		602-274-1673

REGARDING: Side Bar Entertainment, Inc. adv. Larmer

FROM: GEORGE H. SMITH

PAGES: 2 including cover.

COMMENTS:

## WARNING

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS ATTORNEY CLIENT PRIVILEGED AND CONFIDENTIAL. THIS INFORMATION IS INTENDED ONLY FOR THE RECIPIENT(S) IDENTIFIED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE DO NOT MAKE ANY COPIES OF IT, PLEASE IMMEDIATELY NOTIFY THE SENDER BY TELEPHONE, AND RETURN THE ORIGINAL OF ALL PAGES RECEIVED TO THE ADDRESS SET FORTH ABOVE VIA U.S. MAIL. THANK YOU FOR YOUR ASSISTANCE.

5665 NORTH SCOTTSDALE ROAD • SUITE F-100 • SCOTTSDALE, ARIZONA 85258

DLLC

2002 JUL 12 P 12:14

## BERK &amp; MOSKOWITZ

PROFESSIONAL CORPORATION

TELEPHONE: 480.607.7900

FACSIMILE: 480.607.7300

FIRM@BERKMOSKOWITZ.COM

WWW.BERKMOSKOWITZ.COM

January 30, 2002

VIA FACSIMILE 602-274-1673

Harvey Yee  
4407 N. Seventh Street  
Phoenix, AZ 85014

Re: Side Bar Entertainment, Inc. adv. Larmer

Dear Harvey:

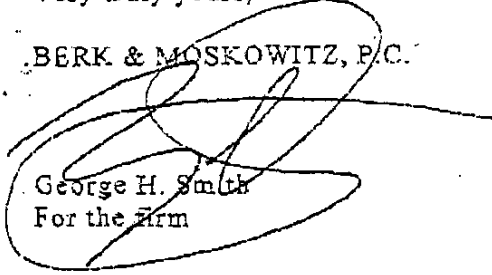
This letter will confirm our conversation of this morning wherein I informed you that my client, Side Bar Entertainment, Inc., has agreed to renew the subject liquor #6 license (#06070513), by paying the applicable renewal fee on or before the close of business on Thursday, January 31, 2002. This letter will also confirm that you have agreed to postpone the public sale which you had previously scheduled for February 1, 2002, at 10:00 a.m. and that instead you will be conducting, if necessary, a private sale of the collateral on Friday, February 8, 2002. This will also confirm that neither you nor your client will be disposing of any of the collateral, including, but not limited to, the subject liquor license at any time before February 8, 2002. The purpose of the delay is to allow the parties time to amicably settle and resolve their dispute, if possible.

If my understanding of our conversation is incorrect in any way, please contact me immediately. Otherwise, thank you for your courtesy and cooperation in this matter of mutual concern.

Please note that Side Bar Entertainment, Inc., reserves the right to object to the propriety of Ms. Larmer's acceleration of the debt at issue and reserves the right to assert and exercise all other claims, defenses and/or privileges it may have in law or in equity.

Very truly yours,

BERK &amp; MOSKOWITZ, P.C.



George H. Smith  
For the firm

cc: Joseph Gams  
Craig Collins (via facsimile)  
GHS:dh



DLLC

2002 JUL 12 P 12:14

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Side Bar Entertainment, Inc.  
9163 W. Union Hills, #105-5B  
Peoria, AZ 85382

**2. Article Number (Copy from service label)**

7001 1940 0007 5533 5321

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X *[Signature]* 1/22/02

☐ Agent  
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

**3. Service Type**

☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

**U.S. Postal Service  
CERTIFIED MAIL RECEIPT**

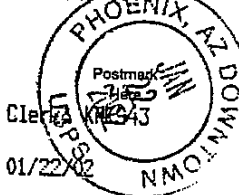
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

7001 1940 0007 5533 5321

Postage	\$ 0.34
Certified Fee	2.10
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 3.94</b>

UNIT ID: 8071



Sent To *Side Bar Entertainment, Inc.*  
Street, Apt. No., or PO Box No. *9163 W. Union Hills, #105-5B*  
City, State, ZIP+4 *Peoria, AZ 85382*

PS Form 3800, January 2001

See Reverse for Instructions



DLLC

2002 JUL 12 P 12:14

FURNITURE/FIXTURE/EQUIPMENT LIST FOR;

Kelly's Lounge  
2418 E. Thomas #20  
Phoenix, Arizona 85016

EXHIBIT "A"

2002 JUL 12 P 12:14

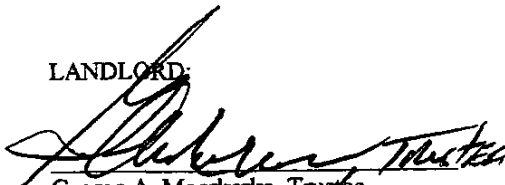
<u>No.</u>	<u>Item</u>
1	#6 Liquor License (#06070513)
1	8'x10' Walk In Cooler
1	Small Refrigerator
1	Small Microwave Oven
1	Blender
1	Well Box
1	Three Compartiment Sink
6	Ceiling Fans
21	Bar Stools
7	Tables
18	Chairs
3	25" TV
1	Cash Register
2	Air Conditioners
1	Alarm System




## PARKING AGREEMENT

1. Parties: This Lease, dated as of this day SEP 01/2002 is made by and between Aurora Restaurant LLC (herein called "Tenant") located at 4175 North Goldwater Boulevard and MOERKERKE FAMILY TRUST located at 14550 North Frank Lloyd Wright Boulevard, #100 Scottsdale Arizona 85260 (herein called "Landlord").
2. Premises: Landlord does hereby lease 35 number of parking spaces located at 4147 North Goldwater Boulevard. Located in the City of Scottsdale.
3. Rent: The Tenant agrees to pay \$2000.00 in advance at the commencement of this Lease.
4. Use: The Tenant shall use the premises for the sole purpose of parking from 18:00 hours to 03:00 hours. All parking shall be performed by a bonded, insured professional valet service.
5. Maintenance: The Tenant insures that it will maintain at its own expense the premises in clean and safe condition with any debris removed by 03:30 hours.
6. Term: This agreement is valid for five (5) years commencing September 1, 2002 and ending August 31, 2007. Payment of \$2000.00 rent is due and payable to Landlord on or before each yearly anniversary date of September 1<sup>st</sup>.
7. Insurance / Liability: The Tenant hereby agrees to provide an insurance liability policy with \$1,000,000.00 liability limit and \$50,000.00 property damage limit for said parking lot from Farmers Insurance Company. A Certificate of Insurance for said coverages will be provided within 48 (forty-eight) hours of the signing of this agreement and on every anniversary date (September 1<sup>st</sup>) for the duration of this agreement.
8. Termination: Either party may agree to terminate this notice with 1 (one) week's notice to the other party. This agreement is non-transferable without prior written consent from the Landlord.
9. In the event that any Tenant presently occupying the 4147 building should want parking at any time during the above mentioned hours, Valet Parking shall immediately move any vehicle parked by Valet to accommodate Tenant.

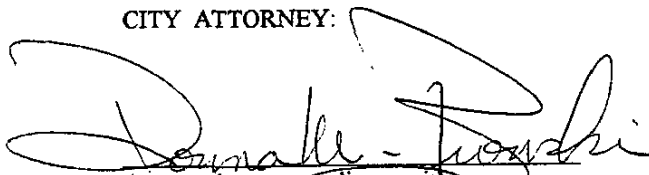
LANDLORD:

  
George A. Moerkerke, Trustee  
Moerkerke Family Trust

TENANT:

  
Richard Geddes  
Aurora Restaurant LLC

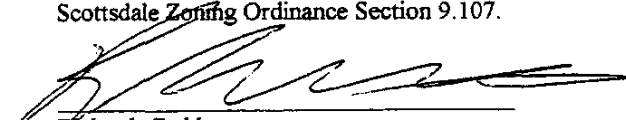
CITY ATTORNEY:

  
Approved as to compliance with  
Section 9.107 of the Zoning Ordinance  
for David Pennant

CITY OF SCOTTSDALE THIRD  
PARTY SIGNATOR



Aurora Restaurant, LLC, in accordance with City of Scottsdale Zoning Ordinance Section 9.107 B.2 acknowledges a cessation of use served if the access to the above mentioned leased parking is terminated without substitution of the parking spaces meeting the requirements of the City of Scottsdale Zoning Ordinance Section 9.107.

  
Richard Geddes  
Managing Director



City of Scottsdale  
City Council  
3939 Drinkwater Boulevard  
Scottsdale, Arizona 85251

November 26<sup>th</sup>, 2002

To Whom It May Concern,

This letter is in reference to the Devil's Martini – which currently operates at the corner of Third Avenue and Goldwater Boulevard. At this point in time we have found our new neighbors at the Devil's Martini to be very receptive, friendly, and a welcome addition to our community. As a business operating in close proximity to the Devil's Martini we have no complaints regarding the manner in which they operate. In addition, they seem to operate an upscale venue in keeping with Old Town Scottsdale standards and even go further in their efforts by diligently cleaning the refuse in the street before our arrival in the mornings.

We are aware that they are applying for a transfer from a Number 12 Liquor License to a Number 6 Liquor License and we understand the issues that are involved. Our business has no objections to the Devil's Martini application and wish to keep the Devil's Martini as one of our neighbors in Old Town Scottsdale.

Steven Paul Salen

Business Name

7045 E. 3rd Avenue, Scottsdale, AZ

Business Address

Steven Schatz

Representative



City of Scottsdale  
City Council  
3939 Drinkwater Boulevard  
Scottsdale, Arizona 85251

November 26<sup>th</sup>, 2002

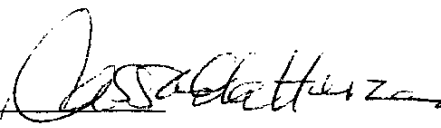
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Vista Productions, Inc  
Business Name

7045. E. 3<sup>rd</sup> Ave Suite 201  
Business Address

Cassandra Henze   
Representative



City of Scottsdale  
City Council  
3939 Drinkwater Boulevard  
Scottsdale, Arizona 85251

November 26<sup>th</sup>, 2002

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Kilde Meyer Gallery  
Business Name

4142 N. Marshall Way  
Business Address

Tom Belke  
Representative



City of Scottsdale  
City Council  
3939 Drinkwater Boulevard  
Scottsdale, Arizona 85251

November 26<sup>th</sup>, 2002

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The Paper Place  
Business Name

4130 N Marshall Way  
Business Address

Quayle  
Representative



City of Scottsdale  
City Council  
3939 Drinkwater Boulevard  
Scottsdale, Arizona 85251

November 26<sup>th</sup>, 2002

To Whom It May Concern,

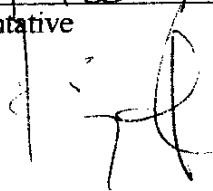
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ART ONE GALLERY, INC.  
Business Name

4120 N. MARSHALL WAY  
Business Address

KEVIN FOOTE, PRESIDENT  
Representative





City of Scottsdale  
City Council  
3939 Drinkwater Boulevard  
Scottsdale, Arizona 85251

November 26<sup>th</sup>, 2002

To Whom It May Concern,

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Naked Horse Gallery  
Business Name

4151 N. Marshall Way #B  
Business Address

Vick Pearson  
Representative



City of Scottsdale  
City Council  
3939 Drinkwater Boulevard  
Scottsdale, Arizona 85251

November 26<sup>th</sup>, 2002

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CORNELIS HOLLANDER DESIGNS, INC  
Business Name

4151 N. MARSHALL WAY, SCOTTSDALE, AZ 85251  
Business Address

CHRISTA HOLLANDER  
Representative



City of Scottsdale  
City Council  
3939 Drinkwater Boulevard  
Scottsdale, Arizona 85251

November 26<sup>th</sup>, 2002

To Whom It May Concern,

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IOSSI GALLERY  
Business Name

4151 N. MARSHALL WAY  
Business Address

Pam IOSSI  
Representative



City of Scottsdale  
City Council  
3939 Drinkwater Boulevard  
Scottsdale, Arizona 85251

November 26<sup>th</sup>, 2002

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Jewelry By Gaudinier  
Business Name

4211 N. Marshall Way, Scottsdale, AZ  
Business Address

Melissa Kammasser  
Representative



City of Scottsdale  
City Council  
3939 Drinkwater Boulevard  
Scottsdale, Arizona 85251

November 26<sup>th</sup>, 2002

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BILLINGSLEY'S SALON  
Business Name

4200 MARSHALL WAY  
Business Address

Wanda Billingsley  
Representative



City of Scottsdale  
City Council  
3939 Drinkwater Boulevard  
Scottsdale, Arizona 85251

November 26<sup>th</sup>, 2002

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Cathy Rum Cube Caterers  
Business Name

4200 N. Marshall Way  
Business Address

Cathy Rum Cube  
Representative



City of Scottsdale  
City Council  
3939 Drinkwater Boulevard  
Scottsdale, Arizona 85251

November 26<sup>th</sup>, 2002

To Whom It May Concern,

This letter is in reference to the Devil's Martini – which currently operates at the corner of Third Avenue and Goldwater Boulevard. At this point in time we have found our new neighbors at the Devil's Martini to be very receptive, friendly, and a welcome addition to our community. As a business operating in close proximity to the Devil's Martini we have no complaints regarding the manner in which they operate. In addition, they seem to operate an upscale venue in keeping with Old Town Scottsdale standards and even go further in their efforts by diligently cleaning the refuse in the street before our arrival in the mornings.

We are aware that they are applying for a transfer from a Number 12 Liquor License to a Number 6 Liquor License and we understand the issues that are involved. Our business has no objections to the Devil's Martini application and wish to keep the Devil's Martini as one of our neighbors in Old Town Scottsdale.

Marshall Arts Gallery  
Business Name

4168 N. Marshall Way, Scottsdale  
Business Address

Katrina Van Luyk  
Representative



City of Scottsdale  
City Council  
3939 Drinkwater Boulevard  
Scottsdale, Arizona 85251

November 26<sup>th</sup>, 2002

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EEZE FINE ART  
Business Name

4164 N. MARSHALL WAY  
Business Address

SCOTTSDALE, AZ  
[Signature] - OWNER  
Representative



City of Scottsdale  
City Council  
3939 Drinkwater Boulevard  
Scottsdale, Arizona 85251

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Spade & Soler  
Business Name

7040 East Third Avenue  
Business Address

Tara Kelley  
Representative





# CITY COUNCIL REPORT



MEETING DATE: January 7, 2003      ITEM NO. 2      GOAL: Preserve Character and Environment

## SUBJECT

**Liquor License Request for Next  
96-LL-2002**

## REQUEST

To consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license.

## OWNER

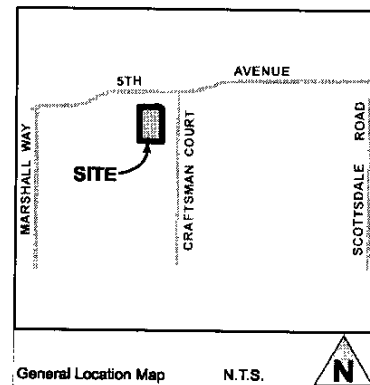
BJR Entertainment, LLC

## APPLICANT CONTACT

Brian Jacob Ruede  
5514 N. Granite Reef Road  
Scottsdale, AZ 85250  
480-206-8444

## LOCATION

7111 E. 5<sup>th</sup> Ave.



## BACKGROUND

This site is zoned (C-2) Central business district. This is the former Velvet Room. This is a new license for an existing restaurant. The distance to the nearest school, Scottsdale Culinary Institute is 6300 ft. The distance to the nearest church, Christian Science First Church, is 800 ft. There are 110 liquor licenses within a one half mile radius of this location.

## APPLICANT'S PROPOSAL

### Goal/Purpose of Request.

The applicant is seeking a favorable recommendation on a series 12 (restaurant) liquor license. The applicant has maintained the required posting notice for the State mandated 20-day period.

## IMPACT ANALYSIS

**Police/Fire.** The Police Department has conducted a review and recommends approval of this case.

**Financial Services.** Revenue Collection has reported that the applicant has met City licensing requirements and all fees have been paid.

**Parking.** Planning and Development Services has conducted a review of the parking requirements. Parking is in compliance with the zoning ordinance.

**Development Information.** This establishment is 6600 sq. ft. The kitchen and office areas are 2300 sq. ft. and the remaining 4300 sq. ft. is used for dining and bar service.

*(Continued)*

**Code Enforcement.** Code Enforcement has conducted a review and has determined that the applicant is in compliance with the zoning ordinance.

**Maricopa County.** Maricopa County Environmental Health has reviewed this application and reported no opposition to this case.

**Community involvement.** No petitions or protests have been filed with the City Clerk during the 20 (twenty) day posting period.

**OPTIONS AND STAFF  
RECOMMENDATION**

City Council has the option of recommending approval or denial to the Arizona Department of Liquor Licenses and Control.

**Recommended Approach:** The review of this application has shown that it meets zoning, parking, and public safety requirements.  
Staff recommends approval.

**Proposed Next Steps:** The City Council's recommendation of approval or denial will be forwarded to the Department of Liquor Licenses and Control for their consideration. If the application is approved by the Department of Liquor Licenses and Control, the applicant should receive their license from the State within 15 days.

**RESPONSIBLE  
DEPT(S)  
STAFF CONTACT(S)**

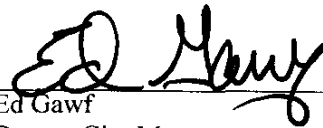
**Planning and Development Services Department**

Jeff Fisher  
Interim Plan Review and Permit Services Director  
480-312-7619  
E-mail: [jefisher@ci.scottsdale.az.us](mailto:jefisher@ci.scottsdale.az.us)

**APPROVED BY**

  
Kroy Ekblaw  
Planning and Development Services General Manager

12 / 23 / 02  
Date

  
Ed Gawf  
Deputy City Manager

12/23/02  
Date

**ATTACHMENTS**

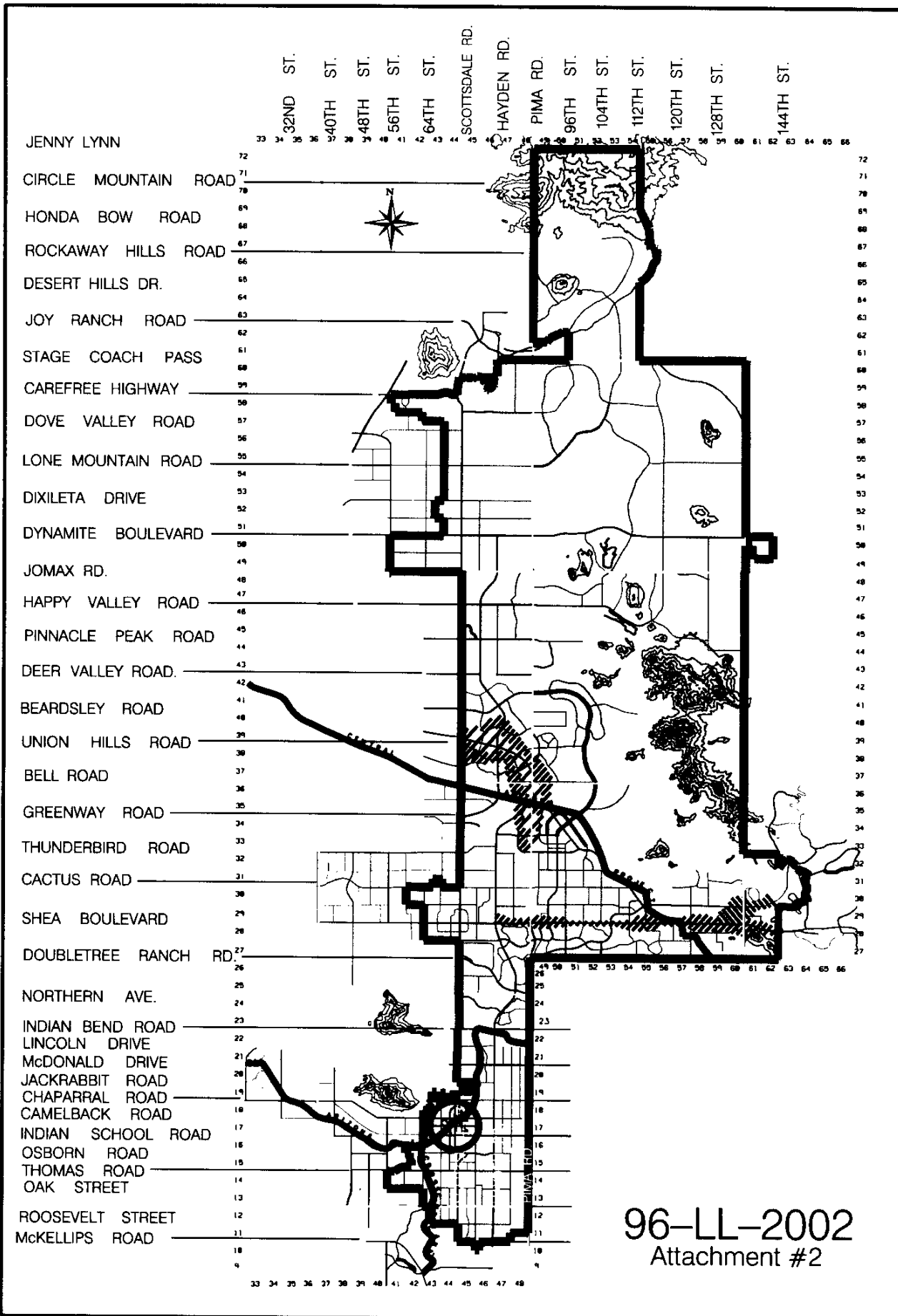
- #1: Aerial Map
- #2: Vicinity Map
- #3: Application



Next

96-LL-2002

ATTACHMENT #1



# Liquor Licenses Within A Half-Mile Radius of 7111 E 5th Ave.



Liquor Licenses.mxd  
 Printed: 12/02/2002  
 Created By: Brian Hancock  
 Source: City of Scottsdale, State  
 of Arizona Dept. of Liquor Licenses  
 and Control.

0 265 530 1,060 1,590 2,120 Feet  
 1 inch equals 748.92 feet



# ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141



400 W Congress #150  
Tucson AZ 85701-1352  
(520) 628-6595

DLIC

96-CC-2002

## APPLICATION FOR LIQUOR LICENSE

2002 OCT -9 P 3 11  
TYPE OR PRINT WITH BLACK INK

Notice: Effective Nov. 1, 1997, All Owners, Agents, Partners, Stockholders, Officers, or Managers actively involved in the day to day operations of the business must attend a Department approved training course or provide proof of attendance within the last five years. See page 5 of the Liquor Licensing requirements.

### SECTION 1 This application is for a:

OCT 1 2002

### SECTION 2 Type of ownership:

- ☒ INTERIM PERMIT Complete Section 5  
☒ NEW LICENSE Complete Sections 2, 3, 4, 13, 14, 15, 16, 17  
☒ PERSON TRANSFER (Bars & Liquor Stores ONLY) Complete Sections 2, 3, 4, 11, 13, 15, 16, 17  
☐ LOCATION TRANSFER (Bars and Liquor Stores ONLY) Complete Sections 2, 3, 4, 12, 13, 15, 16, 17  
☐ PROBATE/WILL ASSIGNMENT/DIVORCE DECREE Complete Sections 2, 3, 4, 9, 13, 15, 17 (fee not required)  
☐ GOVERNMENT Complete Sections 2, 3, 4, 10, 13, 15, 16, 17

- ☐ J.T.W.R.O.S. Complete Section 6  
☐ INDIVIDUAL Complete Section 6  
☐ PARTNERSHIP Complete Section 6  
☐ CORPORATION Complete Section 7  
☒ LIMITED LIABILITY CO. Complete Section 7  
☐ CLUB Complete Section 8  
☐ GOVERNMENT Complete Section 10  
☐ TRUST Complete Section 6  
☐ OTHER Explain

### SECTION 3 Type of license and fees:

LICENSE #: 12074259

1. Type of License: Restaurant 12 2. Total fees attached: \$

APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE.

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

### SECTION 4 Applicant: (All applicants must complete this section)

1. Applicant/Agent's Name: Mr. RUEDE, BRIAN JACOB  
Insert one name ONLY to appear on license Last First Middle

2. Corp./Partnership/L.L.C.: BJR ENTERTAINMENT, LLC  
(Exactly as it appears on Articles of Inc. or Articles of Org.)

3. Business Name: NEXT B1022540  
(Exactly as it appears on the exterior of premises)

4. Business Address: 7111 E. 5th Avenue Scottsdale, Maricopa, Arizona 85251  
(Do not use PO Box Number) City COUNTY Zip

5. Business Phone: (480) 970-6398 Residence Phone: (480) 206-8444

6. Is the business located within the incorporated limits of the above city or town? ☒ YES ☐ NO

7. Mailing Address: 7111 E. 5th Avenue Scottsdale AZ 85251  
City State Zip

8. Enter the amount paid for a 06, 07, or 09 license: \$ N/A (Price of License ONLY)

#### DEPARTMENT USE ONLY

Accepted by: [Signature] Date: 10-9-02 Lic. # 12075319  
Fees: 100 - 100 - - - 84 - \$ 224 -  
Application Interim Permit Agent Change Club F. Prints TOTAL

PROCESSING APPLICATIONS TAKES APPROXIMATELY 90 DAYS, AND CIRCUMSTANCES OFTEN RESULT IN A LONGER WAITING PERIOD.  
YOU ARE CAUTIONED REGARDING PLANS FOR A GRAND OPENING, ETC., BEFORE FINAL APPROVAL AND ISSUANCE OF THE LICENSE.

**SECTION 5 Interim Permit:**

1. If you intend to operate business while your application is pending you will need an Interim Permit pursuant to A.R.S. 4-203.01.
2. There **MUST** be a valid license of the same type you are applying for currently issued to the location.
3. Enter the license number currently at the location. 12074259 **2002 OCT -9 P 3:11**
4. Is the license currently in use? ☐ YES ☒ NO If no, how long has it been out of use? 4 months

ATTACH THE LICENSE CURRENTLY ISSUED AT THE LOCATION TO THIS APPLICATION.

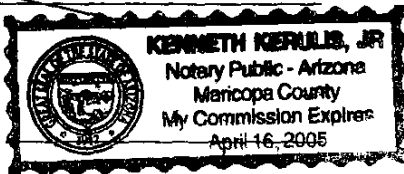
I, William D. Kalm, declare that I am the CURRENT LICENSEE of the stated license and location. I have read this application and the contents and all statements are true, correct and complete.

X [Signature]  
(Signature)

State of Arizona County of Maricopa  
The foregoing instrument was acknowledged before me this

day of October, 2002  
Day of Month Month Year

My commission expires on:



[Signature]  
(Signature of NOTARY PUBLIC)

**SECTION 6 Individual or Partnership Owners:**

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 FEE FOR EACH CARD.

1. Individual:

Last	First	Middle	% Owned	Residence Address	City State Zip
			%		

Partnership Name: (Only the first partner listed will appear on license) \_\_\_\_\_

General-Limited	Last	First	Middle	% Owned	Residence Address	City State Zip
<input type="checkbox"/> <input type="checkbox"/>				%		
<input type="checkbox"/> <input type="checkbox"/>				%		
<input type="checkbox"/> <input type="checkbox"/>				%		
<input type="checkbox"/> <input type="checkbox"/>				%		

(ATTACH ADDITIONAL SHEET IF NECESSARY)

2. Is any person, other than the above, going to share in the profits/losses of the business? ☐ YES ☐ NO

**SECTION 7 Corporation/Limited Liability Co.:**

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 FEE FOR EACH CARD.

☐ CORPORATION

Complete questions 1, 2, 3, 5, 6, 7, 8.

☒ L.L.C.

Complete questions 1, 2, 4, 5, 6, 7. **LLC** Attach copy of Articles of Org. and Operation Agreement.

1. Name of Corporation/L.L.C.: **BJR Entertainment, LLC**

(Exactly as it appears on Articles of Org. or L.L.C. Agreement)

2. Date Incorporated/Organized: **07/24/2002** State where Incorporated/Organized: **ARIZONA**

3. AZ Corporation Commission File No.: **N/A** Date authorized to do business in AZ: **N/A**

4. AZ L.L.C. File No.: **L-1039078-3** Date authorized to do business in AZ: **N/A**

5. Is Corp./L.L.C. non-profit? ☐ YES ☒ NO If yes, give IRS tax exempt number: \_\_\_\_\_

6. List all directors/officers in Corporation/L.L.C.:

Last	First	Middle	Title	Residence Address	City	State	Zip
Ruede,	Brian	Jacob	Sole Member	5514 N. Granite Reef Rd.	Scottsdale	Az.	85250

(ATTACH ADDITIONAL SHEET IF NECESSARY)

7. List stockholders or controlling members owning 10% or more:

Last	First	Middle	% Owned	Residence Address	City	State	Zip
Ruede,	Brian	Jacob	100	5514 N. Granite Reef Rd.	Scottsdale	Az.	85250
			%				
			%				
			%				

(ATTACH ADDITIONAL SHEET IF NECESSARY)

8. If the corporation/L.L.C. is owned by another entity, attach an ownership, and director/officer/members disclosure for the parent entity. Attach additional sheets as necessary in order to disclose real people. **N/A.**

**SECTION 8 Club Applicants:**

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 FEE FOR EACH CARD.

1. Name of Club: \_\_\_\_\_ Date Chartered: \_\_\_\_\_  
(Exactly as it appears on Club Charter) (Attach a copy of Club Charter)

2. Is club non-profit? ☐ YES ☐ NO If yes, give IRS tax exempt number: \_\_\_\_\_

3. List officer and directors:

Last	First	Middle	Title	Residence Address	City	State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

**SECTION 9** Probate, Will Assignment or Divorce Decree of an existing Bar or Liquor Store:

1. Current Licensee's Name: \_\_\_\_\_  
(Exactly as it appears on license) Last First Middle
2. Assignee's Name: \_\_\_\_\_  
Last First Middle
3. License Type: \_\_\_\_\_ License Number: \_\_\_\_\_ Date of Last Renewal: \_\_\_\_\_
4. ATTACH TO THIS APPLICATION A CERTIFIED COPY OF A WILL, PROBATE DISTRIBUTION INSTRUMENT, OR DIVORCE DECREE THAT SPECIFICALLY DISTRIBUTES THE LIQUOR LICENSE TO THE ASSIGNEE TO THIS APPLICATION.

**SECTION 10** Government: (for cities, towns, or counties only)

1. Person to administer this license: \_\_\_\_\_  
Last First Middle
2. Assignee's Name: \_\_\_\_\_  
Last First Middle

**A SEPARATE LICENSE MUST BE OBTAINED FOR EACH PREMISES FROM WHICH SPIRITUOUS LIQUOR IS SERVED.**

**SECTION 11** Person to Person Transfer:

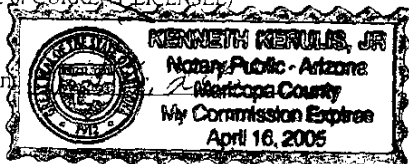
Questions to be completed by CURRENT LICENSEE (Bars and Liquor Stores ONLY).

1. Current Licensee's Name: **KALM, WILLIAM D.** Entity: **Agent**  
(Exactly as it appears on license) Last First Middle (Indiv., Agent, etc.)
2. Corporation/L.L.C. Name: **Velvet Room LLC**  
(Exactly as it appears on license)
3. Current Business Name: **Velvet Room**  
(Exactly as it appears on license)
4. Current Business Address: **7111 E. 5th Avenue**  
**Scottsdale, Arizona 85251**
5. License Type: **Restaurant** License Number: **12074259** Last Renewal Date: **03/31/2002**
6. Current Mailing Address (other than business): **Same as item 4 above.**
7. Have all creditors, lien holders, interest holders, etc. been notified of this transfer? ☒ YES ☐ NO
8. Does the applicant intend to operate the business while this application is pending? ☒ YES ☐ NO If yes, complete section 5, attach fee, and current license to this application.
9. I hereby relinquish my rights to the above described license to the applicant named in this application and hereby declare that the statements made in this section are true, correct and complete.
- I, **WILLIAM D. KALM, Agent**, declare that I am the CURRENT LICENSEE of the stated license. I have read this application and the contents and all statements are true, correct and complete.

X

(Signature of CURRENT LICENSEE)

My commission expires on



State of **Arizona** County of **Maricopa**  
The foregoing instrument was acknowledged before me this  
**7<sup>th</sup>** day of **October** **2002**  
Day of Month Month Year

(Signature of NOTARY PUBLIC)

**SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)**

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE.

1. Current Business Name and Address:  
(Exactly as it appears on license) DLCC
2. New Business Name and Address:  
(Do not use PO Box Number) 2002 OCT -9 P 3:11
3. License Type: \_\_\_\_\_ License Number: \_\_\_\_\_ Last Renewal Date: \_\_\_\_\_
4. What date do you plan to move? \_\_\_\_\_ What date do you plan to open? \_\_\_\_\_

**SECTION 13 Questions for all in-state applicants:**

1. Distance to nearest school: 6300 ft. Name/Address of school: Scottsdale Culinary Institute  
(Regardless of distance) 8100 E. Camelback Rd Scottsdale AZ 85251
2. Distance to nearest church: 800 ft. Name/Address of church: Christian Science First Church  
(Regardless of distance) 4301 N. Winfield Scott Plz. Scottsdale Az. 85251
3. I am the: ☒ LESSEE ☐ SUBLESSEE ☐ OWNER ☐ PURCHASER (of premises)
4. If the premises is leased give lessors name and address: Gilbert Ortega, 7237 E. main Street,  
Scottsdale, Az 85251
- 4a. Monthly rental/lease rate \$ 10,498 . What is the remaining length of the lease? 6 yrs. 8 mos.
- 4b. What is the penalty if the lease is not fulfilled? \$ N/A or other \_\_\_\_\_  
(give details - attach additional sheet if necessary)
5. What is the total business indebtedness of the applicant for this license/location excluding lease? \$ 600,000

Does any one creditor represent more than 10% of that sum? ☒ YES ☐ NO If yes, list below. Total must equal 100%.

Last	First	Middle	% Owed	Residence Address	City	State	Zip
Echo Management			100%	9330 South Priest Drive Tempe	Az.		85284

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for? (BE SPECIFIC) Casual Dining Restaurant
7. Has a license, or a transfer license for the premises on this application been denied by the state within the past one (1) year?  
☐ YES ☒ NO If yes, attach explanation.
8. Does any spirituous liquor manufacturer, wholesaler, or employee, have any interest in your business? ☐ YES ☒ NO
9. Is the premises currently licensed with a liquor license? ☒ YES ☐ NO If yes, give license number and licensee's name:  
License # 12074259 (Exactly as it appears on license) Name William D Kalm

**SECTION 14 Restaurant, or Hotel-Motel Applicants:**

1. Is there a valid restaurant or hotel-motel license at the proposed location? ☒ YES ☐ NO If yes, give licensee's name:

**Kalm, William D. (Agent)**

and license #: **12074259**

Last

First

Middle

2. If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. Section 4-203.01; and complete Section 5 of this application.

3. All restaurant applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor.

4. Do you understand that 40% of your annual gross revenue must be from food sales? ☒ YES ☐ NO

**SECTION 15 Diagram of Premises: (Blueprints not accepted, diagram must be on this form)**

1. Check ALL boxes that apply to your licensed premises:

☒ Entrances/Exits

☐ Drive-in windows

☐ Service windows

☒ Liquor storage areas

☒ Patio enclosures

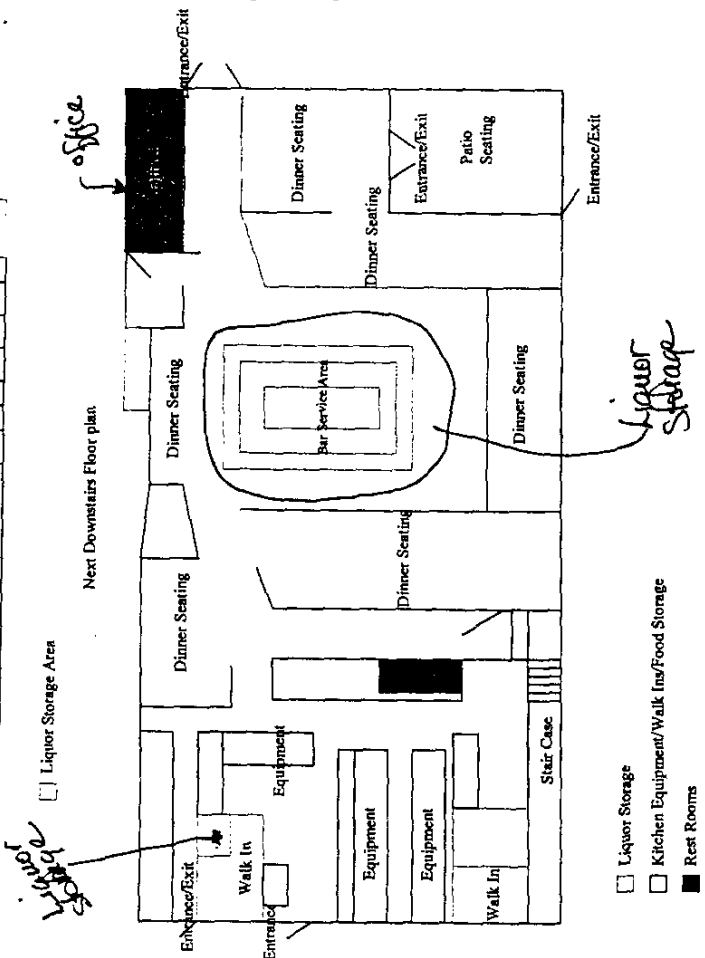
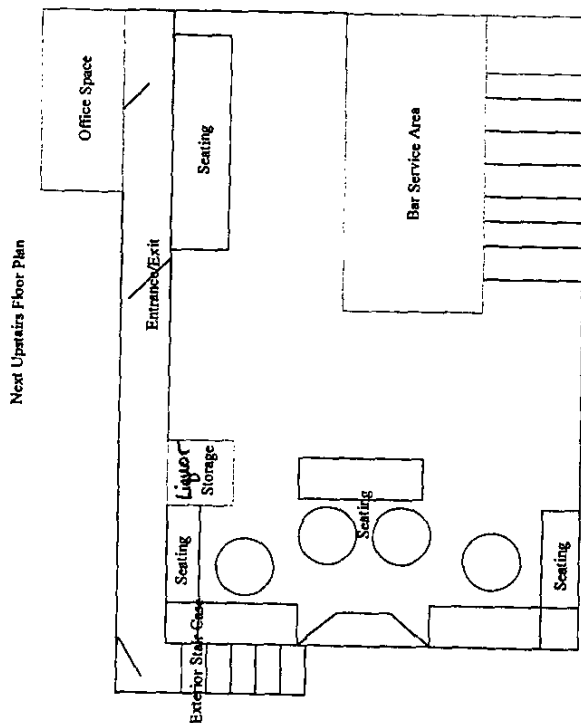
☐ Under construction: estimated completion date \_\_\_\_\_

2. Restaurants and Hotel/Motel applicants must explicitly depict kitchen equipment and dining facilities.

3. The diagram below is the only area where spirituous liquor is to be sold, served, consumed, dispensed, possessed, or stored. Give the square footage or outside dimensions of the licensed premises.

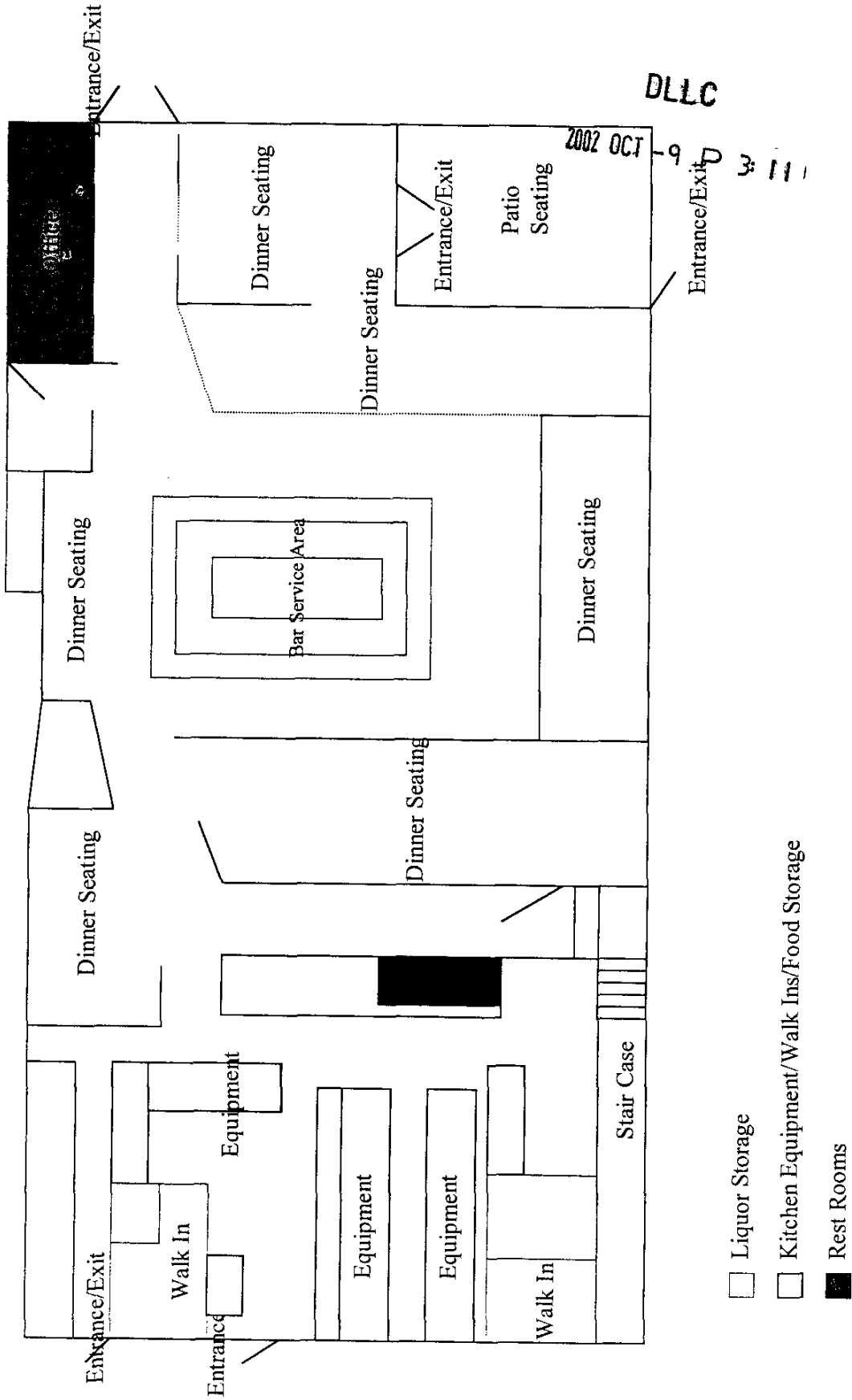
DO NOT INCLUDE PARKING LOTS, LIVING QUARTERS, ETC.

*Please See Attached info*



**YOU MUST NOTIFY THE DEPARTMENT OF LIQUOR OF ANY CHANGES OF BOUNDARIES, ENTRANCES, EXITS, OR SERVICE WINDOWS MADE AFTER SUBMISSION OF THIS DIAGRAM.**

# Next Downstairs Floor plan

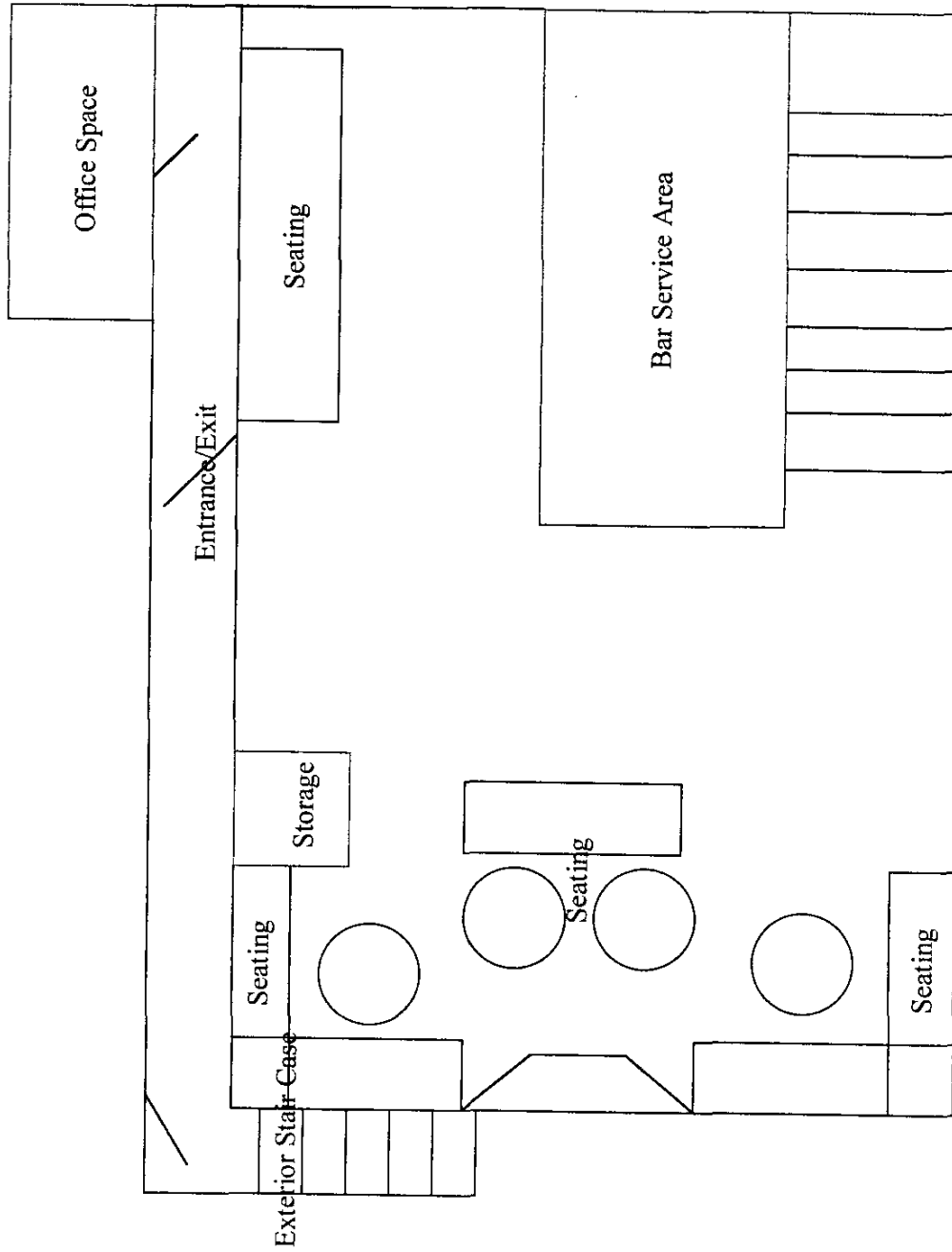


- ☐ Liquor Storage
- ☐ Kitchen Equipment/Walk Ins/Food Storage
- ☒ Rest Rooms

DLLC

2002 OCT -9 P 3:11

Next Upstairs Floor Plan



□ Liquor Storage Area

## Premises Info

- Building Square Footage total: 6600
- Downstairs: 5500 SqFt
  - Dining Room: 3500 SqFt
  - Kitchen: 2000 SqFt
- Upstairs
  - Office Space: 300 SqFt
  - Seating and Bar Service: 800 SqFt.

2002 OCT -9 P 3:11  
DLCC



Next Geographic Data

Number	Name	Series
A	Applicant	12
1	Acme	6
2	Dos Gringos	12
3	Gilligans	6
4	N/A	12
5	Six	12
6	Martini Ranch	12
7	Maloney's	6
8	Holiday Inn	11
9	DJ's	6
10	Tequila Grill	12
11	Don and Charlies	12
12	Famous Door	6
13	Downside Risk	6
14	N/A	
15	Safeway	9
16	Julio's Too	12
17	Axis/Radius	6
18	Perle	12
19	Suade	12
20	Roaring Fork	12
21	Arcadia Liquor	9
22	Bar Luis	12
23	Kona Grill	12
24	Z Tejas	12
25	PF Changs	12
26	Nordstroms	12
27	Tappas Pappas Fritas	12
28	Andersons 5th Estate	6
29	Sugar Shack	6
30	Devils Martini	6
31	Cowboy Caio	12
32	KazBar	6
33	Cat Eye	6
34	Kyoto	12
35	N/A	
36	N/A	
37	Landry's	12
38	Tony Romas	12
39	Circle K	9
40	Fuddruckers	12
41	Ramada Inn	11
42	Coach House	6
43	Pink Pony	12
44	Bandera	12
45	RA	12
46	Buca De Bepo	12
47	Bilet Bar	6
48	N/A	
49	Pishkes	12
50	Marriot	11
51	Az88	12
52	Backstage	12
53	Rusty Spur	6
54	Grapevine	12
55	Malees	12
56	Ayako	12
57	Madisons	12
58	Lucky 7	6
59	Sugar Daddy's	12
60	Mickey's	12
61	Café Blue	12
62	Pepin	6
63	Cajun House	6
64	Soho	6
65	Scottsdale Christian Science Reading Room	N/A

DLCC

2002 OCT -9 P 3:11



# ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141

**DLIC**



400 W Congress #150  
Tucson AZ 85701-1352  
(520) 628-6595

## RESTAURANT OPERATION PLAN

LICENSE # 12074259

1. List by Make, Model and Capacity of your :

Grill	JADE 6 SQ FT COOKING SPACE
Oven	X2 JADE STRHE-4-3-360
Freezer	KYSOR #95168-2-01
Refrigerator	KYSOR #95168-2-02
Sink	1 DOUBLE 1 TRIPLE
Dish Washing Facilities	CMA Dishwashing # AH-2
Food Preparation Counter (Dimensions)	3' x 6' 2' x 3' 3' x 5'
Other	STOVE BURNERS 12 EA JADE

2. Print the name of your restaurant: Next
3. Attach a copy of your menu (Breakfast, Lunch and Dinner including prices).
4. List the seating capacity for:
- |                                     |         |  |
|-------------------------------------|---------|--|
| a. Restaurant area of your premises | [ 136 ] |  |
| b. Bar area of your premises        | [ +53 ] |  |
| c. Total area of your premises      | [ 189 ] |  |
5. What type of dinnerware and utensils are utilized within your restaurant?  
☒ Reusable      ☐ Disposable
6. Does your restaurant have a bar area that is distinct and separate from the restaurant seating? (If yes, what percentage of the public floor space does this area cover).    ☒ Yes 30 %    ☐ No
7. What percentage of your public premises is used primarily for restaurant dining?  
 (Does not include kitchen, bar, cocktail tables or game area.)    70 %

\*Disabled individuals requiring special accommodations, please call the Department.

8. Does your restaurant Contain any games or television? ☐ Yes ☒ No  
(If yes, what types and how many? Pool tables, Video Games, Darts, etc.)

2002 OCT -9 P 3:11

9. Do you have live entertainment or dancing? ☐ Yes ☒ No  
(If yes, what type and how often?)

10. Use space below or attach a list of employee positions and their duties to fully staff your business.

- Head Chef (1): Menu Planning, Supply and Equipment maintenance, Food ordering, Kitchen Staffing and Kitchen profit and loss  
- Sous Chef (1): Supervises kitchen staff in food preparation responsibilities, assists Head chef with food planning, preparation, quality control, cleaning and maintenance.  
- Cooks (3): Responsible for food preparation and presentation  
- Waiter (8-10): Serve customers, keep menu clean, maintain table cleanliness, explain menu and dishes, make recommendations, supervise busboys assigned to designated areas  
- Busser (4-5): Assist wait staff with customer service, table and setting maintenance, cleaning  
- Bar Manager (1): Supervises operations of bar functions including ordering, staff management and training, stocking and ordering  
- Bartender (1-2): Beverage service to customers, stocking, cleanliness

I, Brian Jacob Ruede, hereby declare that I am the APPLICANT filing this application. I have  
(Print full name)  
read this application and the contents and all statements true, correct and complete.

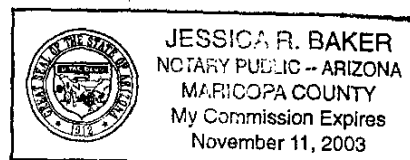
X [Signature]  
(Signature of APPLICANT)

State of Arizona County of Maricopa  
The foregoing instrument was acknowledged before me this  
9th day of Oct 2002  
Day of Month Month Year

My commission expires on:

Nov 11, 2003

[Signature]  
(Signature of NOTARY PUBLIC)



# ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141



DLLC

400 W Congress #150  
Tucson AZ 85701-1352  
(520) 628-6595

2002 OCT 9 5 31

## HOTEL-MOTEL AND RESTAURANT LICENSES RECORDS REQUIRED FOR AUDIT OF SERIES #11 & #12 LICENSES

### MAKE A COPY OF THIS DOCUMENT AND KEEP IT WITH YOUR DLLC RECORDS

In the event of an audit, you will be asked to provide to the department any documents necessary to determine compliance with A.R.S. 205.02.G. Such documents requested may include however, are not limited to:

1. All invoices and receipts for the purchase of food and spirituous liquor for the licensed premises. If you do not have all food or liquor invoices, please contact your vendors immediately and request copies of missing invoices. These must be available for pick-up at the time of the Audit Interview Appointment. **If all food invoices are not available at that time, you may not be given credit for *all* food sales.**
2. A list of *all* food and liquor vendors
3. The restaurant menu used during the audit period
4. A price list for alcoholic beverages during the audit period
5. Mark-up figures on food and alcoholic products during the audit period
6. A recent, **accurate** inventory of food and liquor (taken within two weeks of the Audit Interview Appointment)
7. Monthly Inventory Figures - beginning and ending figures for food and liquor
8. Chart of accounts (copy)
9. Financial Statements-Income Statements-Balance Sheets
10. General Ledger
  - A. Sales Journals/Monthly Sales Schedules
    - 1) Daily sales Reports (to include the name of each waitress/waiter, bartender, etc. with sales for that day)
    - 2) Daily Cash Register Tapes - Journal Tapes and Z-tapes
    - 3) Guest Checks
    - 4) Coupons/Specials
    - 5) Any other evidence to support income from food and liquor sales
  - B. Cash Receipts/Disbursement Journals
    - 1) Daily Bank Deposit Slips
    - 2) Bank Statements and canceled checks
11. Tax Records
  - A. Transaction Privilege Sales, Use and Severance Tax Return (copies)
  - B. Income Tax Return - city, state and federal (copies)
  - C. Any supporting books, records, schedules or documents used in preparation of tax returns

12. Payroll Records

- A. Copies of all reports required by the State and Federal Government
- B. Employee Log (A.R.S. 4-119)
- C. Employee time cards (actual document used to sign in and out each work day)
- D. Payroll records for all employees ~~showing~~ <sup>DLIC</sup> hours worked each week and hourly wages

The sophistication of record keeping varies from establishment to establishment. Regardless of each licensee's accounting methods, the amount of gross revenue derived from the sale of food and liquor must be substantially documented.

**REVOCATION OF YOUR LIQUOR LICENSE MAY OCCUR IF YOU FAIL TO COMPLY WITH A.R.S. 210.A.7. AND A.R.S. 205.02.G.**

**A.R.S. 210.A.7.** The licensee fails to keep for two years and make available to the department upon reasonable request all invoices, records, bills or other papers and documents relating to the purchase, sale and delivery of spirituous liquors and, in the case of a restaurant or hotel-motel licensee, all invoices, records, bills or other papers and documents relating to the purchase, sale and delivery of food.

**A.R.S. 205.02.G.** For the purpose of this section:

1. "Restaurant" means an establishment which derives **at least forty percent (40%)** of its gross revenue from the sale of food.
2. "Gross revenue" means the revenue derived from all sales of food and spirituous liquor on the licensed premises, regardless of whether the sales of spirituous liquor are made under a restaurant license issued pursuant to this section or under any other license that has been issued for the premises pursuant to this article.

I, (print Licensee/Agent's Name):

Ruede Brian Jacob  
Last First Middle

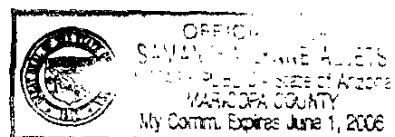
have read and fully understand all aspects of this statement.

State of Arizona County  
of Maricopa

X [Signature] The foregoing instrument was acknowledged before me this  
(Signature of Licensee/Agent) 8<sup>th</sup> day of October, 2002  
Day of Month Month Year

My commission Expires on: 01 Jun 2006 Samantha Lynne [Signature]  
Day of Month Month Year (Signature of NOTARY PUBLIC)

**MAKE A COPY OF THIS DOCUMENT AND KEEP IT WITH YOUR DLLC RECORDS**



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## QUESTIONNAIRE

Attention all Local Governing Bodies: Social Security and Birthdate Information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read Carefully, this instrument is a sworn document. Type or print with black ink. An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and disqualification or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

There is a \$24.00 processing fee for each fingerprint card submitted.

Liquor License # 12074259

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

(If the location is currently licensed)

1. Check appropriate box →	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Partner	<input type="checkbox"/> Stockholder	<input checked="" type="checkbox"/> Member	<input type="checkbox"/> Officer	<input checked="" type="checkbox"/> Agent	<input type="checkbox"/> Manager(Only)
	<input type="checkbox"/> Other (Complete Questions 1-20 & 24)						Complete All Questions <u>except</u> # 14, 14a & 25
	Licensee or Agent must complete # 25 for a Manager						Licensee or Agent must complete # 25

2. Name: RUEDE BRIAN JACOB Date of Birth: [REDACTED]  
Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: [REDACTED] Drivers License #: [REDACTED] State: Arizona  
(This Will Not Become a Part of Public Records)

4. Place of Birth: Jackson Michigan U.S. Height: 6'0" Weight: 175 Eyes: BLUE Hair: BN  
City State Country (not county)

5. Marital Status ☒ Single ☐ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: (480) 206-8444

6. Name of Current or Most Recent Spouse: N/A Date of Birth: [REDACTED]  
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? Arizona If Arizona, date of residency: 1974

8. Telephone number to contact you during business hours for any questions regarding this document. (480) 206-8444

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: Next Premises Phone: (480) 970-6398

11. Licensed Premises Address: 7111 East 5th Avenue Scottsdale Maricopa 85251  
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
02/96	CURRENT	Director of Product Management	Insight Enterprises 6820 South Macd Ave Tempe, AZ 85283

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION <

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address If rented, attach additional sheet giving name, address and phone number of landlord	City	State	Zip
04/96	CURRENT	OWN	5514 North Granite Reef Road	Scottsdale	AZ	85250

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the licensed premises? If you answered YES, how many hrs/day? 7 hrs answer #14a below. If NO, skip to #15. ☒ YES ☐ NO
- 14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☒ NO
- If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.

15. Have you **EVER** been detained, cited, arrested, indicted or summoned into court for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO
16. Have you **EVER** been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO
17. Are there **ANY** administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses **PENDING** against you or **ANY** entity in which you are now involved? ☐ YES ☒ NO
18. Have you or any entity in which you have held ownership, been an officer, member, director or manager **EVER** had a business, professional or liquor APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined in this or any other state? ☐ YES ☒ NO
19. Has anyone **EVER** filed suit or obtained a judgment against you in a civil action, the subject of which involved fraud or misrepresentation of a business, professional or liquor license? ☐ YES ☒ NO
20. Are you **NOW** or have you **EVER** held ownership, been a controlling person, been an officer, member, director, or manager on any other liquor license in this or any other state? ☐ YES ☒ NO

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement giving complete details. Please be sure to include dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

### Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☐ NO
- If the answer to #21 is "NO" course must be completed **BEFORE ISSUANCE** of a new license **OR APPROVAL** on an existing license.
22. Do you make payments to the licensee? ☐ YES ☐ NO If "yes", how much? \$ \_\_\_\_\_ per month. Total debt to licensee \$ \_\_\_\_\_
23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☐ NO If "yes", attach a copy of such agreement

24. I, Brian Jacob Ruede, hereby declare that I am the APPLICANT filing this application.

(Print full name of Applicant)

I have read this questionnaire and the contents and all statements are true, correct and complete.

X [Signature]

(Signature of Applicant)

State of Arizona County of Maricopa

The foregoing instrument was acknowledged before me this

8th day of October, 2002

Day of Month Month Year

My commission expires on: 01 June 2002

Day of Month Month Year

Samantha Lynne Aljets

(Signature of NOTARY PUBLIC)

### FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION

Licensee or Agent Approval of Manager

25. I, (Print Licensee/Agent's Name): \_\_\_\_\_

Last Middle First

Hereby authorize the applicant to act as manager for the named liquor license.

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this

X \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

(Signature of LICENSEE/AGENT) Day of Month Month Year

My commission expires on: \_\_\_\_\_

Day of Month Month Year

(Signature of NOTARY PUBLIC)

# ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

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## CERTIFICATION OF COMPLETED ALCOHOL TRAINING PROGRAM(S)

OBTAIN ORIGINALS OF THIS FORM FROM DLLC-DO NOT PHOTOCOPY, DOCUMENT IS COMPUTER SCANNED. TYPE OR PRINT WITH BLACK INK.

### ALCOHOL TRAINING PROGRAM INDIVIDUAL INFORMATION

Brian Ruede

Individual Name (Print)

[Signature]

Individual Signature

#### TYPE OF TRAINING COMPLETED

#### TRAINER MUST CHECK YES OR NO FOR EACH TYPE

10/1/02

Date Training Completed

☒ YES ☐ NO BASIC

☒ YES ☐ NO ON SALE

☒ YES ☐ NO MANAGEMENT

☐ YES ☒ NO OFF SALE

☐ YES ☒ NO BOTH

☐ YES ☒ NO OTHER

#### IF TRAINEE IS EMPLOYED BY A LICENSEE:

Brian Ruede

NAME OF THE LICENSEE

NEXT

FOR FURTHER INFORMATION

BUSINESS NAME

LIQUOR LICENSE NUMBER

### ALCOHOL TRAINING PROGRAM PROVIDER INFORMATION

#### ARIZONA ALCOHOL AWARENESS ASSOCIATION

Company or Individual Name

4302 NORTH 21<sup>ST</sup> STREET STE. #B

Address

PHOENIX

City

ARIZONA

State

85016

Zip

602-410-2111

Phone

I Certify the above named individual has successfully completed the specified program(s).

JERRY CRITES

Trainer Name (Print)

[Signature]

Trainer Signature

10/1/02

Date

Trainer give original of completed form to trainee, photocopy and maintain completed document for your records.

Mandatory Liquor Law Training for all new applications submitted after Nov. 1, 1997. A.R.S. Section 4-112(G)(2). Completion of the Liquor License Training Courses is required at the issuance of a license.

The person(s) required to attend both the Basic Liquor Law and Management Training, (either on-sale or off-sale), will include all of the following : owner(s), licensee/agent or manager(s) **WHO ARE ACTIVELY INVOLVED IN THE DAY TO DAY OPERATION OF THE BUSINESS.**

Proof of attendance within the last five years for the required courses must be submitted to the Department before the license application is considered complete.

Before acceptance of a Manager's Questionnaire and/or Agent Change for an existing license, proof of attendance for the Basic Liquor Law and Management Training (either on-sale or off-sale) will be required.



**FIRST**

**TOMATO MOZZARELLA SALAD**  
VINE RIPENED TOMATOES, FRESH MOZZARELLA, EXTRA VIRGIN OLIVE  
OIL, AND BALSAMIC VINEGAR

11

**CALAMARI**

FRIED CALAMARI WITH A WASABI AIOLI AND LEMON

8

**LOBSTER AVOCADO ROLL**

MAINE LOBSTER, AVOCADO, WITH WASABI AND PICKLED GINGER

9

**ASIAN PEAR SALAD**

MIXED GREENS, ASIAN PEAR, BLUE CHEESE, AND A BALSAMIC  
VINAIGRETTE

9

**EDAMAME**

5

**NEXT**

**GRILLED BEEF TENDERLOIN SANDWICH**  
BLUE CHEESE, ARUGULA, AND FRIED SHOESTRING POTATOES

14

**BLACKENED AHI TUNA SALAD**

SPICED AHI TUNA, BEAN SPROUTS, CUCUMBER AND A SESAME  
VINAIGRETTE

12

**LOBSTER RISOTTO**

ARBORIO RICE, LOBSTER, HERBS AND A BASIL OIL

12

**CITRUS CHICKEN SANDWICH**

MARINATED GRILLED CHICKEN, WATERCRESS, AND FONTINA CHEESE,  
FRIED ONION RINGS

13

**CRAB CAKE**

PICKLED RED AND YELLOW PEPPERS WITH A CILANTRO AIOLI

12

**GRILLED FLATBREAD**

GOAT CHEESE, CHICKEN, PORT WINE LEEKS AND GREEN ONIONS

10

**LAST**

**CRÈME BRULE**

SERVED WITH FRESH BERRIES

8

**CHOCOLATE COVERED STRAWBERRIES**

8

**FRUIT AND CHEESE PLATE**

DRUNKEN GOAT, MIRABO, AND TALEGGIO, SERVED WITH A FIG  
CHUTNEY

10

DL1C  
2002 OCT -9 P 3 11



STATE OF ARIZONA

DEPARTMENT OF LIQUOR LICENSES  
AND CONTROL

ALCOHOLIC BEVERAGE LICENSE

License 12074259

Issue Date: 12/15/1999

Expiration Date: 3/31/2003

Issued To:

WILLIAM D KALM, Agent  
VELVET ROOM LLC, Owner

Restaurant

Mailing Address:

WILLIAM D KALM  
VELVET ROOM LLC  
VELVET ROOM  
7111 E 5TH AVE  
PHOENIX, AZ 85028

Location:

VELVET ROOM  
7111 E 5TH AVE  
SCOTTSDALE, AZ 85251



EXP 31/2003

POST THIS LICENSE IN A CONSPICUOUS PLACE

2002 OCT -9 P 3 11



# CITY COUNCIL REPORT



MEETING DATE: January 7, 2003

ITEM NO.

3

GOAL: Preserve Character and Environment

## SUBJECT

**Liquor License Request for Caspian Restaurant  
99-LL-2002**

## REQUEST

To consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 7 (beer and wine) State liquor license.

## OWNER

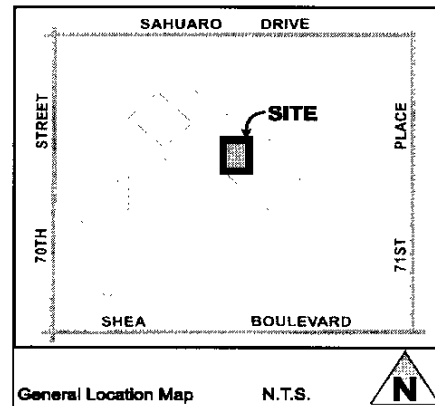
Shish Kebab House Inc.

## APPLICANT CONTACT

Kaveh Kashani  
7674 E. San Fernando Dr.  
Scottsdale, AZ 85255  
480-419-6591

## LOCATION

7000 East Shea Blvd.  
suite 1580  
Scottsdale Promenade



## BACKGROUND

This site is zoned (C-2) central business district.  
This is a license for a location transfer for a dine and take out restaurant.  
The distance to the nearest school, Chaparral High School is 1300 ft.  
The distance to the nearest church, Chaparral Christian Church, is 1300 ft.  
There are 56 liquor licenses within a one half mile radius of this location.

## APPLICANT'S PROPOSAL

### Goal/Purpose of Request.

The applicant is seeking a favorable recommendation on a series 7 (beer and wine) liquor license. The applicant has maintained the required posting notice for the State mandated 20 day period.

## IMPACT ANALYSIS

**Police/Fire.** The Police Department has conducted a review and recommends approval of this case.

**Financial Services.** Revenue Collection has reported that the applicant has met City licensing requirements and all fees have been paid.

**Parking.** Planning and Development Services has conducted a review of the parking requirements. Parking is in compliance with the zoning ordinance.

**Development Information.** This establishment is 2400 sq. ft.

*(Continued)*

# ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

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400 W Congress #150  
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**99-LL-2002 APPLICATION FOR LIQUOR LICENSE**

TYPE OR PRINT WITH BLACK INK

Notice: Effective Nov. 1, 1997, All Owners, Agents, Partners, Stockholders, Officers, or Managers actively involved in the day to day operations of the business must attend a Department approved liquor law training course or provide proof of attendance within the last five years. See page 5 of the Liquor Licensing requirements.

**SECTION 1** This application is for a:

- ☐ INTERIM PERMIT Complete Section 5  
☐ NEW LICENSE Complete Sections 2, 3, 4, 13, 14, 15, 16, 17  
☐ PERSON TRANSFER (Bars & Liquor Stores ONLY) Complete Sections 2, 3, 4, 11, 13, 15, 16, 17  
☒ LOCATION TRANSFER (Bars and Liquor Stores ONLY) Complete Sections 2, 3, 4, 12, 13, 15, 16, 17  
☐ PROBATE/WILL ASSIGNMENT/DIVORCE DECREE Complete Sections 2, 3, 4, 9, 13, 15, 17 (fee not required)  
☐ GOVERNMENT Complete Sections 2, 3, 4, 10, 13, 15, 16, 17

**SECTION 2** Type of ownership:

- ☐ J.T.W.R.O.S. Complete Section 6  
☐ INDIVIDUAL Complete Section 6  
☐ PARTNERSHIP Complete Section 6  
☒ CORPORATION Complete Section 7  
☐ LIMITED LIABILITY CO. Complete Section 7  
☐ CLUB Complete Section 8  
☐ GOVERNMENT Complete Section 10  
☐ TRUST Complete Section 6  
☐ OTHER Explain \_\_\_\_\_

**SECTION 3** Type of license and fees:

LICENSE #: 07070836

1. Type of License: BEER & WINE (7) 2. Total fees attached: \$ \_\_\_\_\_

**APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE.**

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

**SECTION 4** Applicant: (All applicants must complete this section)

1. Applicant/Agent's Name: Mr. KASHANI KAVEH E.  
 (Insert one name ONLY to appear on license) Last First Middle  
 2. Corp./Partnership/L.L.C.: SHISH KEBAB HOUSE INC.  
 (Exactly as it appears on Articles of Inc. or Articles of Org.)  
 3. Business Name: CASPIAN RESTAURANT  
 (Exactly as it appears on the exterior of premises)  
 4. Business Address: 7000 EAST SHEA BLVD STE 1580 SCOTTSDALE AZ 85254  
 (Do not use PO Box Number) City COUNTY Zip  
 5. Business Phone: ( ) PENDING Residence Phone: (480) 419-6591  
 6. Is the business located within the incorporated limits of the above city or town? ☒ YES ☐ NO  
 7. Mailing Address: 7000 EAST SHEA BLVD STE 1580 SCOTTSDALE AZ 85254  
 City State Zip  
 8. Enter the amount paid for a 06, 07, or 09 license: \$ \_\_\_\_\_ (Price of License ONLY)

**DEPARTMENT USE ONLY**

Accepted by: [Signature] Date: 11/14/02 Lic. # 07070836  
 Fees: 100.00 Application Interim Permit Agent Change Club F. Prints \$ 100.00 TOTAL

PROCESSING APPLICATIONS TAKES APPROXIMATELY 90 DAYS, AND CIRCUMSTANCES OFTEN RESULT IN A LONGER WAITING PERIOD.  
 YOU ARE CAUTIONED REGARDING PLANS FOR A GRAND OPENING, ETC., BEFORE FINAL APPROVAL AND ISSUANCE OF THE LICENSE.

**SECTION 5 Interim Permit:**

If you intend to operate business while your application is pending you will need an Interim Permit pursuant to A.R.S. 4-203.01.

There **MUST** be a valid license of the same type you are applying for currently issued to the location. **DLLC**

Enter the license number currently at the location. \_\_\_\_\_

Is the license currently in use? ☐ YES ☐ NO

If no, how long has it been out of use? **2002 NOV 14 P. 1: 36**

**ATTACH THE LICENSE CURRENTLY ISSUED AT THE LOCATION TO THIS APPLICATION.**

\_\_\_\_\_, declare that I am the CURRENT LICENSEE of the stated license and  
(Print full name)

I have read this application and the contents and all statements are true, correct and complete.

\_\_\_\_\_  
(Signature)

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this

\_\_\_\_\_ day of \_\_\_\_\_  
Day of Month Month Year

My commission expires on: \_\_\_\_\_

\_\_\_\_\_  
(Signature of NOTARY PUBLIC)

**SECTION 6 Individual or Partnership Owners:**

**EVERY PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 FEE FOR EACH CARD.**

Individual:

First	Middle	% Owned	Residence Address	City State Zip
_____	_____	____%	_____	_____

Partnership Name: (Only the first partner listed will appear on license) \_\_\_\_\_

General-Limited	Last	First	Middle	% Owned	Residence Address	City State Zip
<input type="checkbox"/> <input type="checkbox"/>	_____	_____	_____	____%	_____	_____
<input type="checkbox"/> <input type="checkbox"/>	_____	_____	_____	____%	_____	_____
<input type="checkbox"/> <input type="checkbox"/>	_____	_____	_____	____%	_____	_____
<input type="checkbox"/> <input type="checkbox"/>	_____	_____	_____	____%	_____	_____

(ATTACH ADDITIONAL SHEET IF NECESSARY)

Is any person, other than the above, going to share in the profits/losses of the business? ☐ YES ☐ NO

## SECTION 7 Corporation/Limited Liability Co.:

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 FEE FOR EACH CARD.

- ☒ CORPORATION  
☐ L.L.C.

Complete questions 1, 2, 3, 5, 6, 7, 8.

Complete questions 1, 2, 4, 5, 6, 7 and attach copy of Articles of Org. and Operation Agreement.

1. Name of Corporation/L.L.C.: SHISH KERAB HOUSE INC.  
(Exactly as it appears on Articles of Inc./Articles of Org.)

2. Date Incorporated/Organized: AUG 30 02 State where Incorporated/Organized: ARIZONA

3. AZ Corporation Commission File No.: 08824508 Date authorized to do business in AZ: JULY 1999

4. AZ L.L.C. File No.: KK 08824508 Date authorized to do business in AZ: \_\_\_\_\_

5. Is Corp./L.L.C. non-profit? ☐ YES ☒ NO If yes, give IRS tax exempt number: \_\_\_\_\_

6. List all directors/officers in Corporation/L.L.C.:

Last	First	Middle	Title	Residence Address	City State Zip
KASHANI	KAVEH	E.	PRESIDENT	7674 E. SAN FERNANDO DR.	SCOTT, AZ 85255
KASHANI	BADIOLLAH	E.	V. PRESIDENT	12879 E. BECKER LN.	SCOTT, AZ 85279
BORHANI	FOAD		SECRETARY TREASURER	6201 E. WALTAN LN.	SCOTT, AZ 85254

(ATTACH ADDITIONAL SHEET IF NECESSARY)

7. List stockholders or controlling members owning 10% or more:

Last	First	Middle	% Owned	Residence Address	City State Zip
KASHANI	KAVEH	E	25 %	7674 E. SAN FERNANDO DR.	SCOTT, AZ 85255
KASHANI	BADIOLLAH	E.	30 %	12879 E. BECKER LN.	SCOTT, AZ 85279
BORHANI	FOAD		25 %	6201 E. WALTAN LN.	SCOTT, AZ 85254
			%		

(ATTACH ADDITIONAL SHEET IF NECESSARY)

8. If the corporation/L.L.C. is owned by another entity, attach an ownership, and director/officer/members disclosure for the parent entity. Attach additional sheets as necessary in order to disclose real people.

## SECTION 8 Club Applicants:

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 FEE FOR EACH CARD.

1. Name of Club: \_\_\_\_\_ Date Chartered: \_\_\_\_\_  
(Exactly as it appears on Club Charter) (Attach a copy of Club Charter)

2. Is club non-profit? ☐ YES ☐ NO If yes, give IRS tax exempt number: \_\_\_\_\_

3. List officer and directors:

Last	First	Middle	Title	Residence Address	City State Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

**SECTION 9** Probate, Will Assignment or Divorce Decree of an existing Bar or Liquor Store:

Current Licensee's Name: \_\_\_\_\_  
(Exactly as it appears on license) Last First Middle

Assignee's Name: \_\_\_\_\_  
Last First Middle

License Type: \_\_\_\_\_ License Number: \_\_\_\_\_ Date of Last Renewal: \_\_\_\_\_

ATTACH TO THIS APPLICATION A CERTIFICATE OF THE WILL, PROBATE DISTRIBUTION INSTRUMENT, OR DIVORCE DECREE THAT SPECIFICALLY DISTRIBUTES THE LIQUOR LICENSE TO THE ASSIGNEE TO THIS APPLICATION.

**SECTION 10** Government: (for cities, towns, or counties only)

Person to administer this license: \_\_\_\_\_  
Last First Middle

Assignee's Name: \_\_\_\_\_  
Last First Middle

A SEPARATE LICENSE MUST BE OBTAINED FOR EACH PREMISES FROM WHICH SPIRITUOUS LIQUOR IS SERVED.

**SECTION 11** Person to Person Transfer:

Questions to be completed by CURRENT LICENSEE (Bars and Liquor Stores ONLY).

Current Licensee's Name: \_\_\_\_\_ Entity: \_\_\_\_\_  
(Exactly as it appears on license) Last First Middle (Indiv., Agent, etc.)

Corporation/L.L.C. Name: \_\_\_\_\_  
(Exactly as it appears on license)

Current Business Name: \_\_\_\_\_  
(Exactly as it appears on license)

Current Business Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License Type: \_\_\_\_\_ License Number: \_\_\_\_\_ Last Renewal Date: \_\_\_\_\_

Current Mailing Address (other than business): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Have all creditors, lien holders, interest holders, etc. been notified of this transfer? ☐ YES ☐ NO

Does the applicant intend to operate the business while this application is pending? ☐ YES ☐ NO If yes, complete section 5, attach fee, and current license to this application.

I hereby relinquish my rights to the above described license to the applicant named in this application and hereby declare that the statements made in this section are true, correct and complete.

\_\_\_\_\_, declare that I am the CURRENT LICENSEE of the stated license. I have read this  
(Print full name)

application and the contents and all statements are true, correct and complete.

\_\_\_\_\_  
(Signature of CURRENT LICENSEE)

State of \_\_\_\_\_ County of \_\_\_\_\_  
The foregoing instrument was acknowledged before me this  
\_\_\_\_\_ day of \_\_\_\_\_,  
Day of Month Month Year

Commission expires on: \_\_\_\_\_

\_\_\_\_\_  
(Signature of NOTARY PUBLIC)

**SECTION 12** Location to Location Transfer: (Bars and Liquor Stores ONLY)

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE.

1. Current Business Name and Address: SHISH KEBAB HOUSE  
(Exactly as it appears on license) 5023 WEST OLLIE AVE GLENDALE AZ 85302
2. New Business Name and Address: CASPIAN NEW TURKISH  
(Do not use PO Box Number) 7000 EAST SHEA BLVD STE 1580 SCOTTSDALE AZ 85254
3. License Type: 7 License Number: 07070836 Last Renewal Date: 4/24/2002
4. What date do you plan to move? DEC. 1, 2002 What date do you plan to open? DEC. 15<sup>TH</sup>, 2002

**SECTION 13** Questions for all in-state applicants:

1. Distance to nearest school: 1300 ft. Name/Address of school: CHAPARRAL HIGH  
(Regardless of distance) 6935 E. GOLD DUST SCOTTSDALE 85254
2. Distance to nearest church: 1300 ft. Name/Address of church: CHAPARRAL CHRISTIAN CHURCH  
(Regardless of distance) 6451 E. SHEA BLVD SCOTTSDALE AZ 85254
3. I am the: ☒ LESSEE ☐ SUBLESSEE ☐ OWNER ☐ PURCHASER (of premises)
4. If the premises is leased give lessors name and address: MEB PROPERTY MANAGEMENT  
7000 E. SHEA BLVD STE 1470 SCOTTSDALE AZ 85254
- 4a. Monthly rental/lease rate \$ 5000. What is the remaining length of the lease? 5 yrs. 0 mos.
- 4b. What is the penalty if the lease is not fulfilled? \$ 60,000. or other \_\_\_\_\_  
(give details - attach additional sheet if necessary)
5. What is the total business indebtedness of the applicant for this license/location excluding lease? \$ 100,000.

Does any one creditor represent more than 10% of that sum? ☒ YES ☐ NO If yes, list below. Total must equal 100%.

Last	First	Middle	% Owed	Residence Address	City	State	Zip
BANK ONE			100%	43 <sup>RD</sup> AVE & OLIVE			

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for? (BE SPECIFIC) PIKE IN AND TAKEOUT RESTAURANT
7. Has a license, or a transfer license for the premises on this application been denied by the state within the past one (1) year?  
☐ YES ☒ NO If yes, attach explanation.
8. Does any spirituous liquor manufacturer, wholesaler, or employee, have any interest in your business? ☐ YES ☒ NO
9. Is the premises currently licensed with a liquor license? ☐ YES ☒ NO If yes, give license number and licensee's name:  
License # \_\_\_\_\_ (Exactly as it appears on license) Name \_\_\_\_\_

**SECTION 14 Restaurant, or Hotel-Motel Applicants:**

Is there a valid restaurant or hotel-motel liquor license at the proposed location? ☐ YES ☒ NO If yes, give licensee's name:

and license #: 0116  
Last First Middle

If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. Section 4-203.01; and complete Section 5 of this application. 2002 NOV 14 P 1:36

All restaurant applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor.

Do you understand that 40% of your annual gross revenue must be from food sales? ☐ YES ☐ NO

**SECTION 15 Diagram of Premises: (Blueprints not accepted, diagram must be on this form)**

Check ALL boxes that apply to your licensed premises:

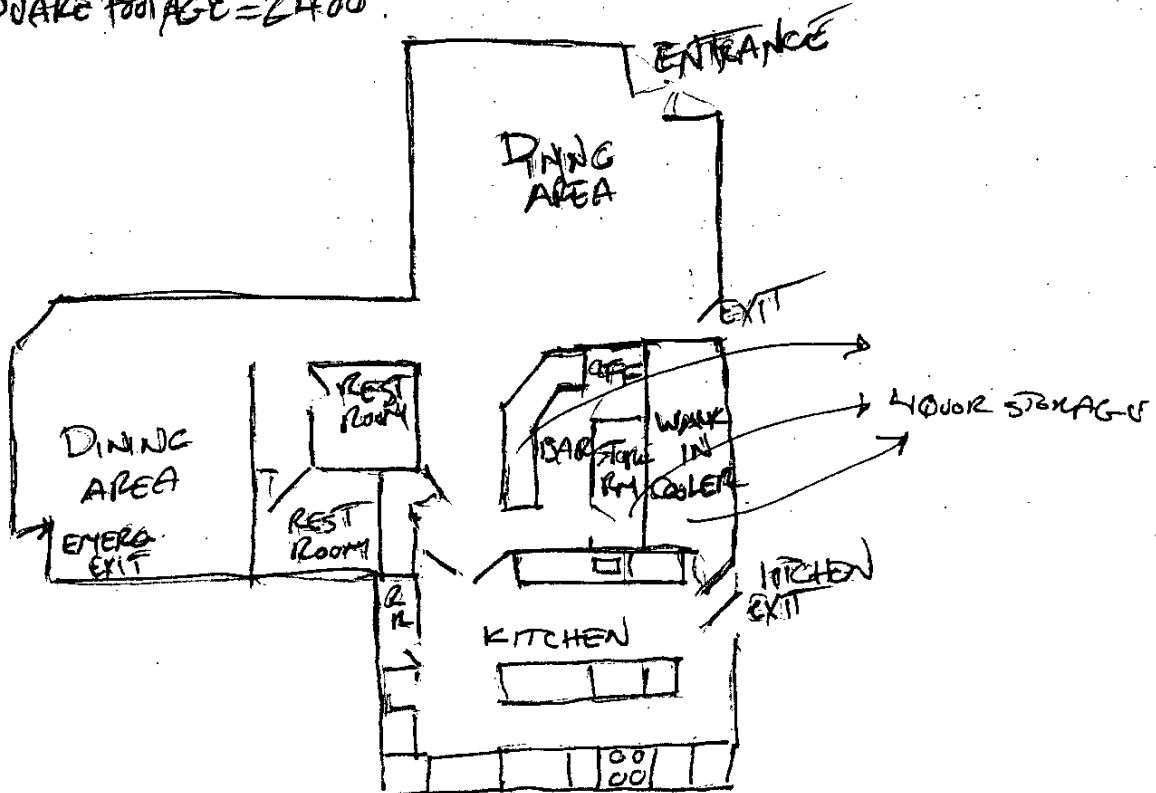
- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Entrances/Exits | <input checked="" type="checkbox"/> Liquor storage areas                     |
| <input type="checkbox"/> Drive-in windows           | <input type="checkbox"/> Patio enclosures                                    |
| <input type="checkbox"/> Service windows            | <input type="checkbox"/> Under construction: estimated completion date _____ |

Restaurants and Hotel/Motel applicants must explicitly depict kitchen equipment and dining facilities.

The diagram below is the only area where spirituous liquor is to be sold, served, consumed, dispensed, possessed, or stored. Give the square footage or outside dimensions of the licensed premises.

DO NOT INCLUDE PARKING LOTS, LIVING QUARTERS, ETC.

APPROX. SQUARE FOOTAGE = 21400



YOU MUST NOTIFY THE DEPARTMENT OF LIQUOR OF ANY CHANGES OF BOUNDARIES, ENTRANCES, EXITS, OR SERVICE WINDOWS MADE AFTER SUBMISSION OF THIS DIAGRAM.

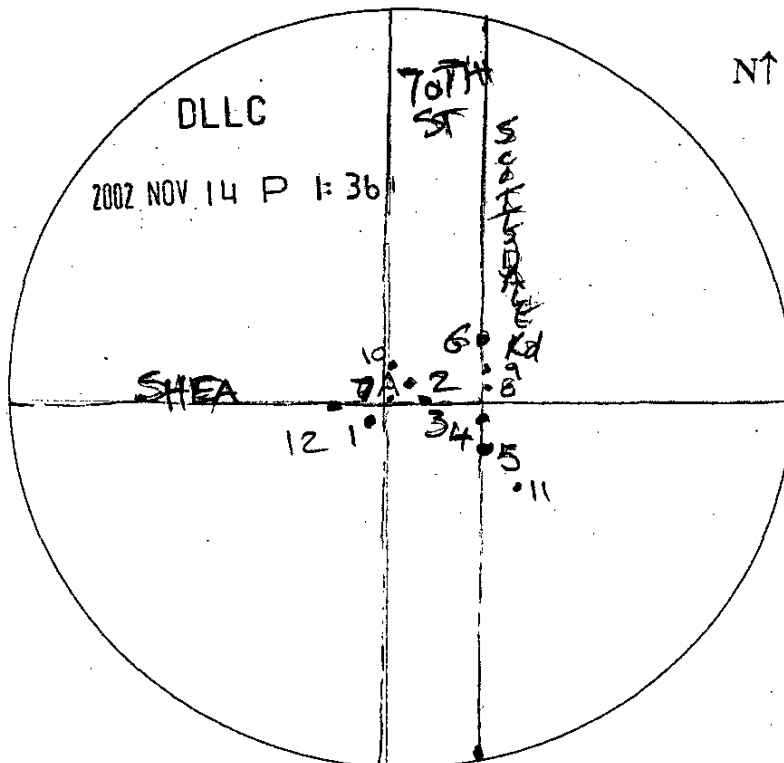
**SECTION 16** Geographical Data:

A SAMPLE FOR THIS SECTION IS PROVIDED ON THE BACK OF THIS PAGE.

List below the exact names of all churches, schools, and spirituous liquor outlets within a one half mile radius of your proposed location.

1. WALGREEN
2. ELI'S BAR & GRU
3. CLAM JUMPERS
4. NYP PIZZA
5. MACARONI GRU
6. GARCIA'S
7. SUSHI ON SHEA
8. OSLO DRUGS
9. SAFeway
10. MARIA'S WHEN IN NAPLES
11. CHAPARRAL CHURCH
12. CHAPARRAL HIGH SCHOOL
13. \_\_\_\_\_
14. \_\_\_\_\_
15. \_\_\_\_\_

(ATTACH ADDITIONAL SHEET IF NECESSARY)



A = Your business name and identify cross streets.

**SECTION 17** Signature Block:

I, KAVEH BRAHMIAN KASITANI, declare that: 1) I am the APPLICANT (Agent/Club Member/Partner), making this application; 2) I have read the application and the contents and all statements are true, correct and complete; 3) that this application is not being made to defraud or injure any creditor, taxing authority, regulatory authority, or transferor; 4) that no other person, firm, or corporation, except as indicated, has an interest in the spirituous liquor license for which these statements are made; and 5) that none of the owners, partners, members, officers, directors or stockholders listed have been convicted of a felony in the past five (5) years.

X [Signature]  
(Signature)

State of AZ County of Maricopa

The foregoing instrument was acknowledged before me this

14 day of November, 2002  
Day of Month Month Year



OFFICIAL SEAL  
SHERRY KINCAID  
Notary Public - State of Arizona  
MARICOPA COUNTY  
My Comm. Expires Feb. 14, 2006

My commission expires on:

[Signature]  
(Signature of NOTARY PUBLIC)

SAMPLE  
GEOGRAPHICAL DATA

n the area adjacent to the map provided below indicates your proposed location  
nd the exact names of all churches, schools, and alcoholic beverage outlets  
ithin a 1/2 mile radius of your proposed location.  
See example below)

DLCC

= Applicant

2002 NOV 12 P 1:36  
Series 06

1 Pink Elephants Series 06

2 Mama's Rest. Series 12

3 Corner Liquors Series 09

4 Joe's Groceries Series 10

5 Lions Club Series 14

6 Burgers R Us Series 07

7 Pizza Perfect Series 07

8 Billy Bobs Bar Series 06

9 St. Anthonys Church

0 St. Anthonys School

1 Burbank Middle School

2 First United Baptist Church

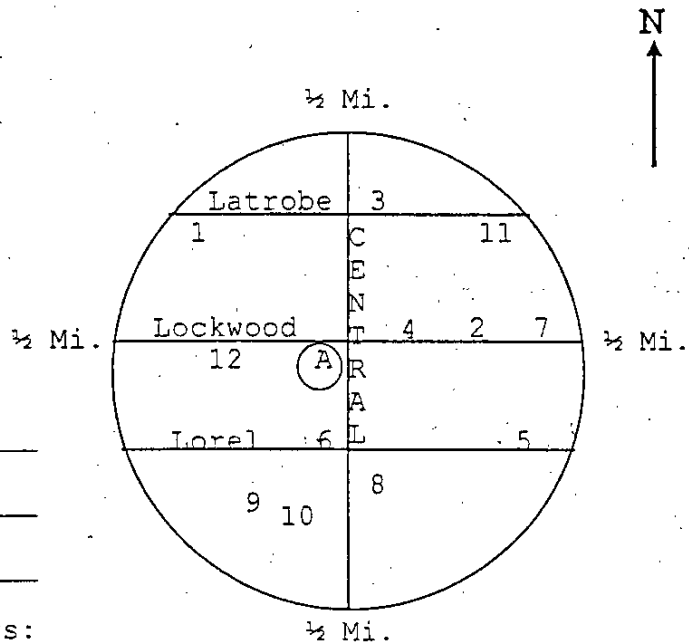
3 \_\_\_\_\_

4 \_\_\_\_\_

5 \_\_\_\_\_

.R.S. Section 4-207.A reads as follows:

. No retailers license shall be issued for any premises which are. at the time  
he license application is received by the Director, within three hundred(300)  
orizontal feet of a church, within three hundred(300) horizontal feet of a  
ublic or private school building with kindergarten programs or any of  
rades one(1) through twelve(12). or within three hundred(300) horizontal  
et of a fenced recreational area adjacent to such school building.



## ARIZONA DEPARTMENT OF LIQUOR LICENSES &amp; CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141



400 W Congress #150  
Tucson AZ 85701-1352  
(520) 628-6595

## QUESTIONNAIRE

Attention all Local Governing Bodies: Social Security and Birthdate Information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with black ink. An extensive investigation of your background may be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

There is a \$24.00 processing fee for each fingerprint card submitted.

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

Liquor License # 07070836

(If the location is currently licensed)

1. Check appropriate box → ☐ Owner ☐ Partner ☐ Stockholder ☐ Member ☒ Officer ☐ Agent ☐ Manager(Only)  
☐ Other PRESIDENT (Complete Questions 1-20 & 24) Complete All Questions except # 14, 14a & 25  
Licensee or Agent must complete # 25 for a Manager Licensee or Agent must complete # 25

2. Name: KASHANI KAVEH EBRAHIMIAN Date of Birth: [REDACTED]  
Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: [REDACTED] Drivers License #: [REDACTED] State: AZ  
(This Will Not Become a Part of Public Records)

4. Place of Birth: TEHRAN IRAN Height: 5'10" Weight: 160 Eyes: BLK Hair: BLK  
City State Country (not county)

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: (480) 419-6591

6. Name of Current or Most Recent Spouse: KASHANI POONAT Date of Birth: [REDACTED]  
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? ARIZONA If Arizona, date of residency: 1981

8. Telephone number to contact you during business hours for any questions regarding this document. (602) 692-6558

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: CASPIAN RESTAURANT Premises Phone: ( )

11. Licensed Premises Address: 7000 E. SHEARBLVD SCOTTSDALE AZ MAHICOPA 85254  
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
4/88	CURRENT	RESTAURANT	SHISH KEBAB HOUSE 5023 WEST OLIVE AVE GLEN AZ 85302

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address If rented, attach additional sheet giving name, address and phone number of landlord	City	State	Zip
5/99	CURRENT	OWN	7674 E. SAN FERNANDO DR. SCOTT AZ	SCOTT	AZ	85254
4/94	5/99	OWN	6836 E PAELPS	SCOTT	AZ	85254

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the licensed premises? If you answered YES, how many hrs/day? 12, answer #14a below. If NO, skip to #15. ☒ YES ☐ NO
- 14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☒ YES ☐ NO
- If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.

15. Have you **EVER** been detained, cited, arrested, indicted or summoned into court for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO
16. Have you **EVER** been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO
17. Are there **ANY** administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses **PENDING** against you or **ANY** entity in which you are now involved? ☐ YES ☒ NO
18. Have you or any entity in which you have held ownership, been an officer, member, director or manager **EVER** had a business, professional or liquor **APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined** in this or any other state? ☐ YES ☒ NO
19. Has anyone **EVER** filed suit or obtained a judgment against you in a civil action, the subject of which involved fraud or misrepresentation of a business, professional or liquor license? ☐ YES ☒ NO
20. Are you **NOW** or have you **EVER** held ownership, been a **controlling person**, been an **officer, member, director, or manager** on any other liquor license in this or any other state? ☒ YES ☐ NO

07070836

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement giving complete details. Please be sure to include dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

### Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☐ NO
- If the answer to #21 is "NO" course must be completed **BEFORE ISSUANCE** of a new license **OR APPROVAL** on an existing license.
22. Do you make payments to the licensee? ☐ YES ☐ NO If "yes", how much? \$ \_\_\_\_\_ per month. Total debt to licensee \$ \_\_\_\_\_
23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☐ NO If "yes", attach a copy of such agreement

24. I, KAUEH EBRAHIMIAN KASHANI, hereby declare that I am the APPLICANT filing this questionnaire.

(Print full name of Applicant)

I have read this questionnaire and the contents and all statements are true, correct and complete.

X [Signature]  
(Signature of Applicant)

State of AZ County of Maricopa  
The foregoing instrument was acknowledged before me this

14 day of November, 2002  
Day of Month Month Year

[Signature]  
(Signature of NOTARY PUBLIC)

My commission expires on Feb 14, 2006  
OFFICIAL SEAL  
SHERRY KINCAID  
Notary Public - State of Arizona  
MARICOPA COUNTY

FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION  
Licensee or Agent Approval of Manager

25. I, (Print Licensee/Agent's Name): \_\_\_\_\_  
Last Middle First

Hereby authorize the applicant to act as manager for the named liquor license.

State of \_\_\_\_\_ County of \_\_\_\_\_  
The foregoing instrument was acknowledged before me this

X \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
(Signature of LICENSEE/AGENT) Day of Month Month Year

My commission expires on: \_\_\_\_\_  
Day of Month Month Year (Signature of NOTARY PUBLIC)

Ok per  
Connie  
on

800 WEST WASHINGTON FIFTH FLOOR PHOENIX, ARIZONA 85007-2934 (602) 542-5141 FAX (602) 542-5707  
Web Site: www.azil.com  
INDIVT S REQUIRING ADA ACCOMMODATIONS CALL (542-9051)

UNITED STATES OF AMERICA

No. [REDACTED]

Registration No. [REDACTED]

I certify that the description given is true, and that the photograph affixed hereto is a likeness of me.

*Kaveh Ebrahimi KASHANI*  
(Complete and true signature of holder)

Be it known that, pursuant to an application filed with the Attorney General at: PHOENIX, AZ

The Attorney General having found that:

KAVEH EBRAHIMIAN KASHANI  
then residing in the United States, intends to reside in the United States when so required by the Naturalization Laws of the United States, and had in all other respects complied with the applicable provisions of such naturalization laws and was entitled to be admitted to citizenship, such person having taken the oath of allegiance in a ceremony conducted by the

U.S. DISTRICT COURT  
FOR THE DIST OF ARIZONA

at: PHOENIX, AZ on: AUGUST 9TH, 1996

that such person is admitted as a citizen of the United States of America.

*Paris Preciser*  
Commissioner of Immigration and Naturalization

Personal description of holder as of date of naturalization: [REDACTED]

Date of birth: [REDACTED]

Sex: MALE

Height: 5 feet 10 inches

Marital Status: MARRIED

Country of former nationality: [REDACTED]

STATE OF ARIZONA  
DEPARTMENT OF LABOR, INDUSTRY AND COMMERCE  
JANE L. MUSFELD  
ACTING DIRECTOR

IT IS FURNISHABLE BY U. S. LAW TO COPY, PRINT OR PHOTOGRAPH THIS CERTIFICATE, WITHOUT LAWFUL AUTHORITY.

FORM N-350 REV. 8-81

DLLO

2002 NOV 14 P 1:56



MR. BADIULLAH EBRAHIMIAN KASHANI IS AND HAS BEEN ONE OF THE  
OWNERS OF SHISH ~~DLIC~~ <sup>3</sup> HOUSE FOR LIQUOR LICENSE # 07070836.  
DLIC

2002 JAN 14 P 3:20  
2002 NOV 14 P 1:36

KAVAN C. KASHANI

*[Signature]*

QUESTION 20 DETAILED EXPLANATION.

I HAVE BEEN THE AGENT ON THE LIQUOR LICENSE FOR SAISH KEBAB  
HOUSE FOR THE PAST FOUR YEARS. (SINCE <sup>DLLC</sup> 10/8/97)

2002 NOV 14 P 1: 2002 JAN 14 P 3:19

*Samir A. Hashmi*

## ARIZONA DEPARTMENT OF LIQUOR LICENSES &amp; CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141



400 W Congress #150  
Tucson AZ 85701-1352  
(520) 628-6595

## QUESTIONNAIRE

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Read Carefully, this instrument is a sworn document. Type or print with black ink. An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

There is a \$24.00 processing fee for each fingerprint card submitted.

Liquor License # 07070836

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

(If the location is currently licensed)

1. Check appropriate box → ☐ Owner ☐ Partner ☒ Stockholder ☐ Member ☒ Officer ☐ Agent ☐ Manager(Only)  
☐ Other (Complete Questions 1-20 & 24) Complete All Questions except # 14, 14a & 25  
Licensee or Agent must complete # 25 for a Manager Licensee or Agent must complete # 25

2. Name: BORITANI FOAD Date of Birth: [REDACTED]  
Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: [REDACTED] Drivers License #: [REDACTED] State: AZ  
(This Will Not Become a Part of Public Records)

4. Place of Birth: TEHRAN IRAN Height: 5'2" Weight: 150 Eyes: BUC Hair: GRAY  
City State Country (not county)

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: (480) 596-0386

6. Name of Current or Most Recent Spouse: DANESHVAR SAROOR Date of Birth: [REDACTED]  
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? ARIZONA If Arizona, date of residency: JAN 1997

8. Telephone number to contact you during business hours for any questions regarding this document. (480) 688-7675

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: CASPIAN RESTAURANT Premises Phone: ( )

11. Licensed Premises Address: 7000 E. SHEA BLVD SCOTTSDALE AZ 85254  
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
JAN 1999	CURRENT	RESTAURANT	SHISH KEBAB HOUSE 5023 W. GIVE AVE. GLENDALE AZ 85302
SEP 1995	JAN 1997	EMPLOYED	6201 E. WATTAN LN. SCOTTSDALE AZ 85254

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION <

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address If rented, attach additional sheet giving name, address and phone number of landlord	City	State	Zip
JULY 97	CURRENT	OWN	6201 E. WATTAN LN.	SCOTTSDALE	AZ	85254

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the licensed premises? If you answered YES, how many hrs/day? 12, answer #14a below. If NO, skip to #15. ☒ YES ☐ NO
- 14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☒ YES ☐ NO  
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.

15. Have you EVER been detained, cited, arrested, indicted or summoned into court for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO
16. Have you EVER been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO
17. Are there ANY administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses PENDING against you or ANY entity in which you are now involved? ☐ YES ☒ NO
18. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined in this or any other state? ☐ YES ☒ NO
19. Has anyone EVER filed suit or obtained a judgment against you in a civil action, the subject of which involved fraud or misrepresentation of a business, professional or liquor license? ☐ YES ☒ NO
20. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director, or manager on any other liquor license in this or any other state? ☒ YES ☒ NO

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement giving complete details. Please be sure to include dates, agencies involved and dispositions.

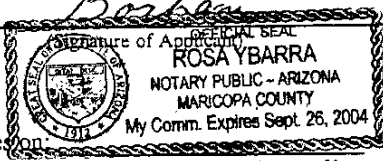
If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

#### Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☐ NO  
If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.
22. Do you make payments to the licensee? ☐ YES ☐ NO If "yes", how much? \$ \_\_\_\_\_ per month. Total debt to licensee \$ \_\_\_\_\_
23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☐ NO If "yes", attach a copy of such agreement

24. I, FOAD BORHANI, hereby declare that I am the APPLICANT filing this questionnaire.  
(Print full name of Applicant)

I have read this questionnaire and the contents and all statements are true, correct and complete.

X Foad Borhani  
  
My commission expires on: \_\_\_\_\_  
Day of Month Month Year

State of Arizona County of Maricopa  
The foregoing instrument was acknowledged before me this  
14 day of November 2002.  
Rosalba  
(Signature of NOTARY PUBLIC)

#### FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION Licensee or Agent Approval of Manager

25. I, (Print Licensee/Agent's Name): \_\_\_\_\_  
Last Middle First

Hereby authorize the applicant to act as manager for the named liquor license.

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this

X \_\_\_\_\_ day of \_\_\_\_\_  
(Signature of LICENSEE/AGENT) Day of Month Month Year

My commission expires on: \_\_\_\_\_  
Day of Month Month Year (Signature of NOTARY PUBLIC)

## ARIZONA DEPARTMENT OF LIQUOR LICENSES &amp; CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141



400 W Congress #150  
Tucson AZ 85701-1352  
(520) 628-6595

## QUESTIONNAIRE

Attention all Local Governing Bodies: Social Security and Birthdate Information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read Carefully, this ~~7002~~ <sup>2002</sup> ~~WOM~~ <sup>WOM</sup> is a sworn document. Type or print with black ink. An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

There is a \$24.00 processing fee for each fingerprint card submitted.

Liquor License # 070700836

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

(If the location is currently licensed)

1. Check appropriate box → ☐ Owner ☐ Partner ☒ Stockholder ☐ Member ☐ Officer ☐ Agent ☐ Manager(Only)  
☐ Other VICE PRESIDENT (Complete Questions 1-20 & 24) (Complete All Questions *except* # 14, 14a & 25)  
Licensee or Agent must complete # 25 for a Manager Licensee or Agent must complete # 25

2. Name: KASHANI BADIOLLAH EBRAHIMIAN Date of Birth: [REDACTED]  
Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: [REDACTED] Drivers License #: [REDACTED] State: AZ  
(This Will Not Become a Part of Public Records)

4. Place of Birth: TEHRAN IRAN Height: 5'9" Weight: 175 LB Eyes: BLK Hair: BLK  
City State Country (not county)

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: (480) 614-8822

6. Name of Current or Most Recent Spouse: DAVODI BAHARA Date of Birth: [REDACTED]  
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? ARIZONA If Arizona, date of residency: 1981

8. Telephone number to contact you during business hours for any questions regarding this document. (602) 770-1408

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: CASPIAN RESTAURANT Premises Phone: ( )

11. Licensed Premises Address: 7000 E. SHEA BLVD SCOTTSDALE AZ NAVICAP 85254  
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
1985	CURRENT	RESTAURANT / VICE PRES.	SAISH KEBAB HOUSE 5023 W. OLIVE AVE GLENDALE AZ 85302

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION 4

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address If rented, attach additional sheet giving name, address and phone number of landlord	City	State	Zip
Dec 1995	CURRENT	OWN	12879 S. BECKER LN.	SCOTT	AZ	85259

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the licensed premises? If you answered YES, how many hrs/day? 8, answer #14a below. If NO, skip to #15. ☒ YES ☐ NO
- 14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☒ YES ☐ NO  
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.

15. Have you EVER been detained, cited, arrested, indicted or summoned into court for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO

16. Have you EVER been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO

17. Are there ANY administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses PENDING against you or ANY entity in which you are now involved? ☐ YES ☒ NO

18. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined in this or any other state? ☐ YES ☒ NO

19. Has anyone EVER filed suit or obtained a judgment against you in a civil action, the subject of which involved fraud or misrepresentation of a business, professional or liquor license? ☐ YES ☒ NO

20. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director, or manager on any other liquor license in this or any other state? ☒ YES ☐ NO

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement giving complete details. Please be sure to include dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

### Manager Section

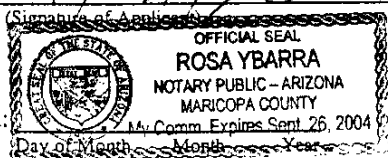
21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☐ NO  
If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.
22. Do you make payments to the licensee? ☐ YES ☐ NO If "yes", how much? \$ \_\_\_\_\_ per month. Total debt to licensee \$ \_\_\_\_\_
23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☐ NO If "yes", attach a copy of such agreement

24. I, Badiollah KASHANI, hereby declare that I am the APPLICANT filing this questionnaire.  
(Print full name of Applicant)

I have read this questionnaire and the contents and all statements are true, correct and complete.

X Badiollah KASHANI  
(Signature of Applicant)

My commission expires on: 14 Day of November Month 2007 Year



State of Arizona County of Maricopa  
The foregoing instrument was acknowledged before me this 14 day of November Month 2007 Year  
Rosa Ybarra  
(Signature of NOTARY PUBLIC)

### FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION Licensee or Agent Approval of Manager

25. I, (Print Licensee/Agent's Name): \_\_\_\_\_  
Last Middle First

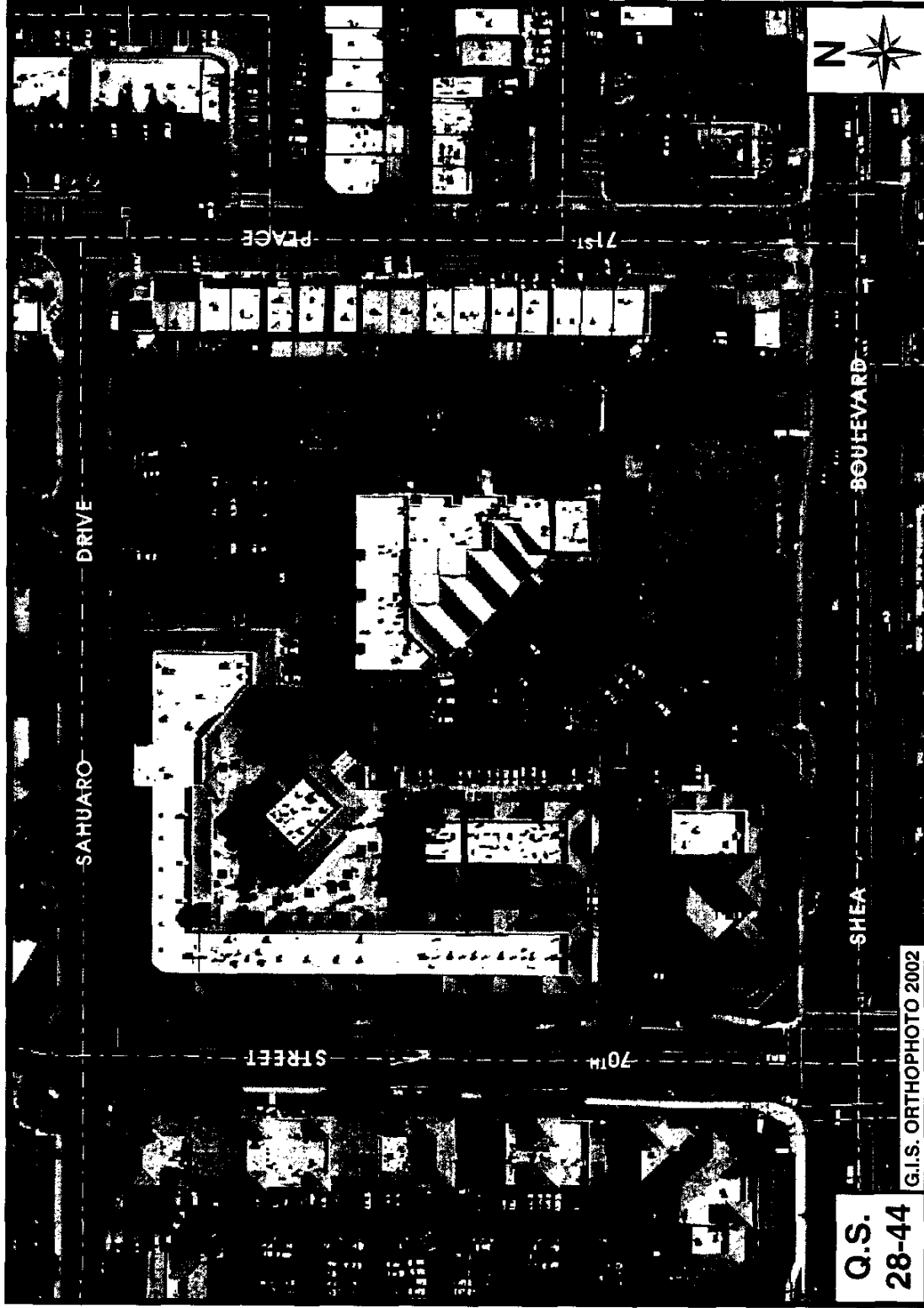
Hereby authorize the applicant to act as manager for the named liquor license.

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this

X \_\_\_\_\_ day of \_\_\_\_\_  
(Signature of LICENSEE/AGENT) Day of Month Month Year

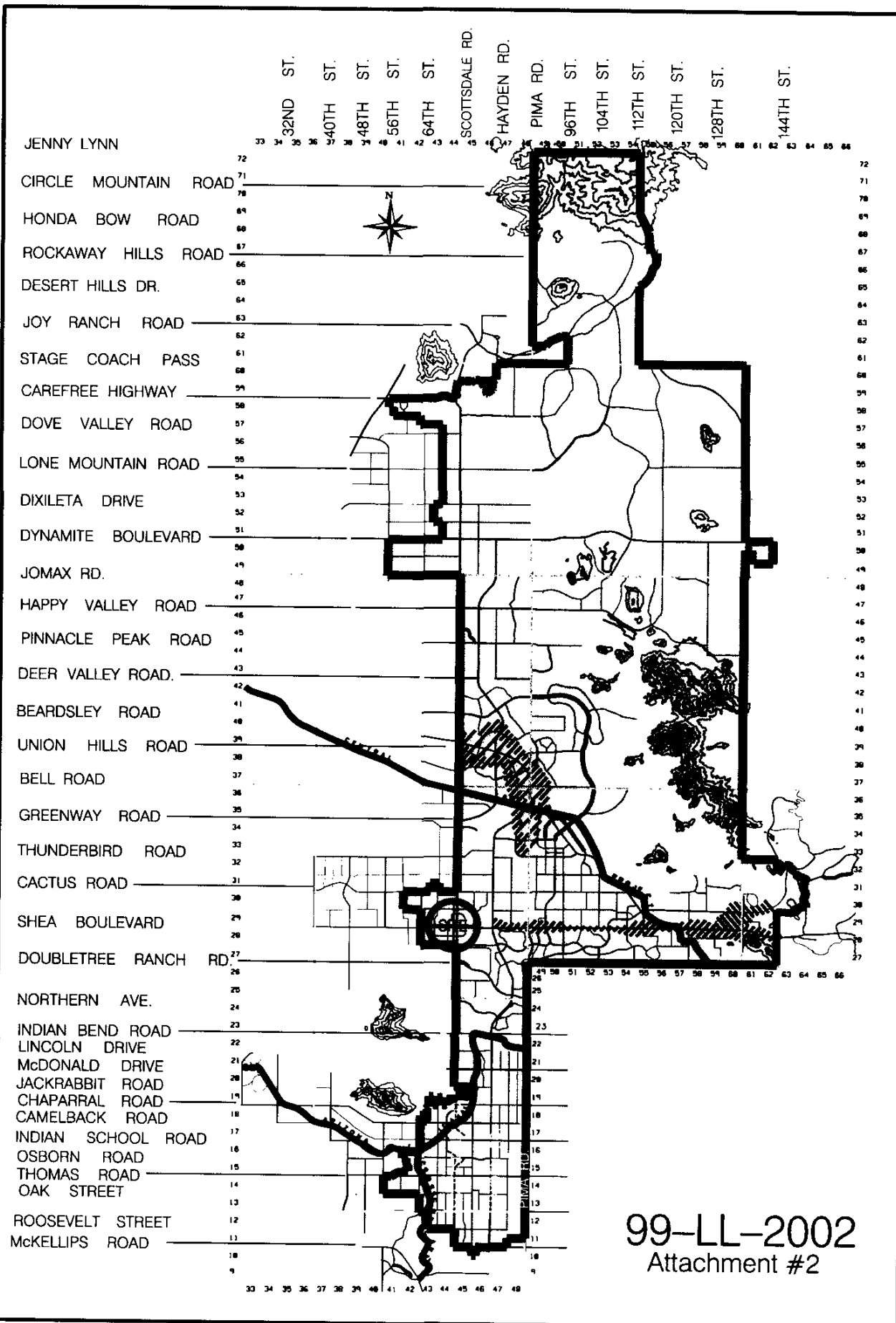
My commission expires on: \_\_\_\_\_  
Day of Month Month Year (Signature of NOTARY PUBLIC)



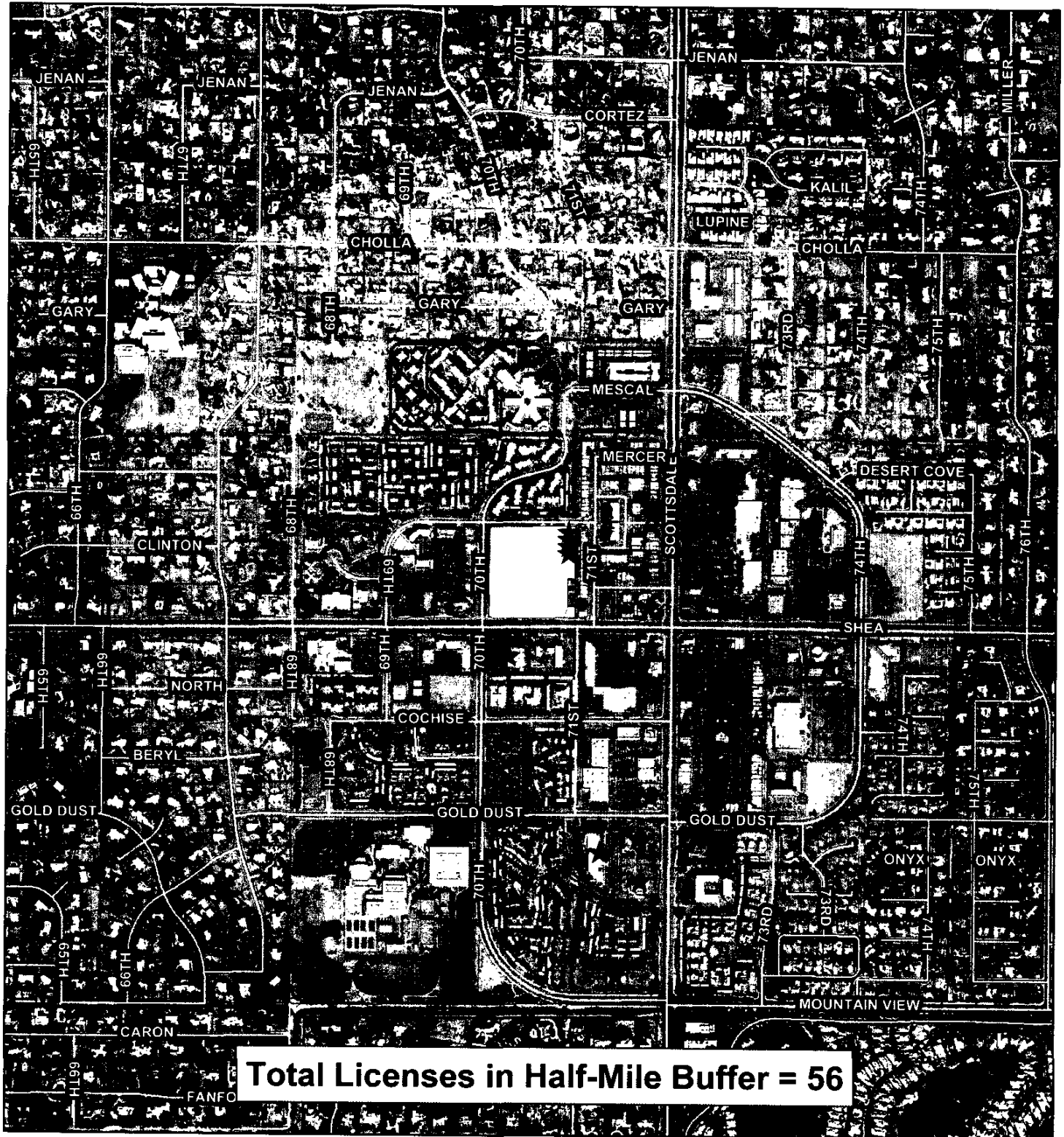
Caspian Restaurant

99-LL-2002

ATTACHMENT #1



# Liquor Licenses Within A Half-Mile Radius of 7000 E Shea Blvd.



Liquor Licenses.mxd  
 Printed: 11/15/2002  
 Created By: Brian Hancock  
 Source: City of Scottsdale, State  
 of Arizona Dept. of Liquor Licenses  
 and Control.

0 285 570 1,140 1,710 2,280 Feet  
 1 inch equals 920.80 feet



# City Council Report



MEETING DATE: January 7, 2003

ITEM NO. 4

GOAL: Coordinate Planning to Balance Infrastructure

## SUBJECT

**Third Amendment to the DC Ranch Development Agreement**

## REQUEST

Request to approve:

1. An amendment to the DC Ranch Development Agreement No. 890074A.
2. To adopt Resolution No. 6201 authorizing the Mayor to amend Development Agreement No. 890074A

### Key Items for Consideration:

- Reduction in overall residential units, resort units and commercial square footage from the DC Ranch master plan
- Reduction and its effects on infrastructure demands
- Adjusting land use budget to reflect existing and future build out conditions

### Related Policies, References:

- 54-ZN-1989 # 1-6

## OWNER

DC Ranch LLC  
480-538-9854

## APPLICANT CONTACT

Karrin Taylor  
Biskind, Hunt & Taylor, P.L.C.  
602-955-3452

## LOCATION

DC Ranch

## BACKGROUND

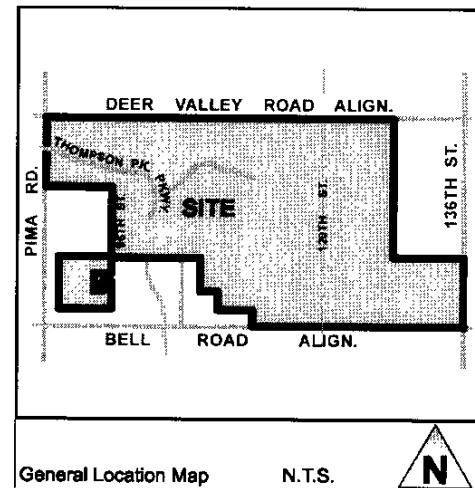
The DC Ranch master planned community was approved with a land use budget that allocated densities (residential units) and intensities (non-residential square footage) within Planning Units (See Attachment #6). The master plan established three main commercial areas; at Pima and Thompson Peak Parkway, Union Hills and Pima Road and within the core of the community at the Union Hills and Thompson Peak Parkway intersection. The remainder of the community consists of residential enclaves intermixed with golf course and resort style amenities.

## APPLICANT'S PROPOSAL

### Goal/Purpose of Request.

The applicant is seeking to modify the land use budget allocation to better reflect the actual development numbers existing and proposed for the DC Ranch master planned community. The following is a summary of the request:

- Overall reduction in dwelling units (1,200); resort units (600) and commercial square footage (2,000,000 sq. feet)



## Scottsdale City Council Report

- Continued cooperation and coordination of a successful development agreement between the City of Scottsdale and DC Ranch

### **Community Impact.**

The proposed modification to the land use budget for DC Ranch reflects the accurate development conditions of the master planned community. Many master planned communities have built out without ever reaching their allowed density and intensity allocations. With regards to this amendment to the development agreement, the applicant is intending to update the land use budget and continue to work with the City to properly depict the overall progress of the development.

Within DC Ranch, the residents have been informed that their community will not reach the development levels under the existing budget. The applicant has worked with the existing residents to better plan the remainder of the community based off the existing and proposed densities. The proposed town center, proposed for the intersection Union Hills Drive and Thompson Peak Parkway, has been significantly reduced in size and form because of the lower densities throughout the master planned community. What was once planned, as an intense mixed-use commercial center, has been downsized to fit into the character of the DC Ranch community.

## **IMPACT ANALYSIS**

**Traffic.** The proposed reduction in density will result in a decrease of traffic on the street system in the DC Ranch area, primarily on Thompson Peak Parkway and Union Hills Drive. There will likely be a reduction of traffic volumes on Pima Road due to the reduction in residential units and resort units. The retail traffic will likely be redistributed to other existing and planned retail developments in the area.

Staff is continuing to work with the representatives of DC Ranch to examine the changes in projected traffic volumes that are anticipated as their development plans evolve. As each Planning Unit begins the development approval process, the circulation master plans are reviewed and refined to determine the appropriate street classification and cross section.

**Water/Sewer.** The applicant has worked with the City's Water Department to plan the infrastructure based off the proposed reduction in density. As the development within DC Ranch has decreased, the infrastructure requirements have been modified to address the reduction in residential units, resort units and commercial square footage.

### **Schools District comments/review.**

Scottsdale Unified School District has been notified of this application. The school district has a copy of the existing DC Ranch land use budget. The district has notified the City that with these reductions in density based of the existing budget, they have no concerns with regards to existing and proposed school capacities.

### **Policy implications.**

The proposed reductions indicate a movement towards lesser densities as development occurs along the McDowell Mountain's slopes. As a result, the lower density and reduction in commercial development could result in lower

## Scottsdale City Council Report

traffic and infrastructure requirements for the area.

### Community involvement.

The applicant has worked with the DC Ranch Community Council and the existing homeowners associations at their community's quarterly town meeting and through other neighborhood meetings to discuss the implications of this request. Additionally, the applicant posted the proposed changes on Ranchnet, an internet site available to all DC Ranch residents. Staff has not received any phone calls regarding this request.

### RECOMMENDATION

#### Recommended Approach:

Staff recommends approval of the third amendment to the DC Ranch development agreement.

### RESPONSIBLE DEPT(S)

Planning and Development Services Department  
Current Planning Services

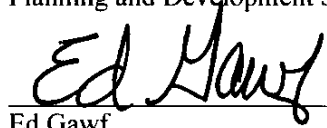
### STAFF CONTACT(S)

Kurt Jones, AICP  
Project Coordination Manager  
480-312-2524  
E-mail: [kjones@www.ScottsdaleAZ.gov](mailto:kjones@www.ScottsdaleAZ.gov)

### APPROVED BY

  
Kroy Ekblaw  
Planning and Development Services General Manager

12  
17 12  
Date

  
Ed Gawf  
Deputy City Manager

12/13/02  
Date

### ATTACHMENTS

1. Applicant's Narrative
2. Regional Context
3. Context Aerial
4. Land Use Map
5. Planning Unit Map
6. Land Use Budget
7. Development Agreement No. 890074 A
8. Resolution No. 6201  
Exhibit 1. Amended Development Agreement



**DC RANCH  
THIRD AMENDMENT TO DEVELOPMENT AGREEMENT  
PROJECT NARRATIVE**

DC Ranch L.L.C. (“DCR”) as the developer of the master planned community known as DC Ranch is requesting an amendment to the Second Amendment to Development Agreement dated October 19, 1998 that governs development of DC Ranch (the “Development Agreement”). The purpose of the request is to reflect the evolution in development of DC Ranch. Specifically, the master planning by DCR of DC Ranch has moved towards a resort lifestyle with a reduction of the intensity of commercial uses and density of residential uses approved under previous agreements with the City of Scottsdale (the “Scottsdale”).

DCR desires to amend the Development Agreement to reflect a reduction of the intensity and density of uses at DC Ranch as set forth in the Revised Land Use Budget attached to the proposed amendment. The proposed amendment would effectuate the reduction of the existing entitlements as follows:

- Approximately 2,000,000 square feet of commercial/office/retail
- 1,200 residential units
- 800 resort rooms

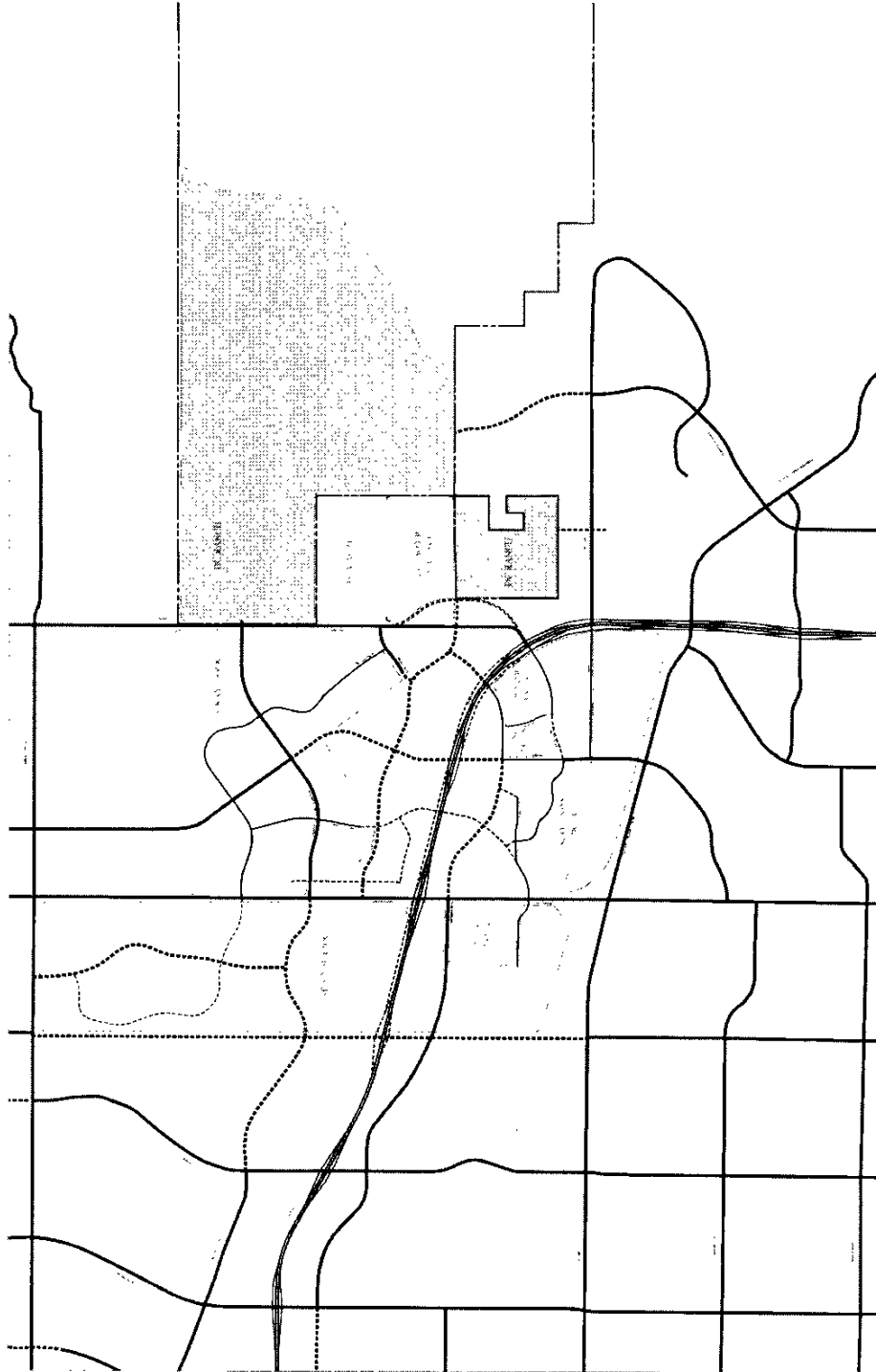
The proposed amendment to the Development Agreement would result in a reduction of density and intensity of uses at DC Ranch which would be in the best interest of the citizens of Scottsdale. The lower density meets the approved Scottsdale General Plan and zoning regulations applicable to DC Ranch and is desirable for the area.

H:\wpdocs\KKTPC\DMB\DCRANCH\Dev Agr Amendment\project narrative.doc





# REGIONAL CONTEXT



SWABACK PARTNERS plc  
Architecture & Planning

OVERALL

INDICATES THE LOCATION OF THE PROJECT AND THE  
PROJECT'S RELATIONSHIP TO THE REGIONAL CONTEXT.

NOTES: GENERAL

THE MAPS OF THE REGIONAL CONTEXT AND THE  
PROJECT'S RELATIONSHIP TO THE REGIONAL CONTEXT  
ARE FOR INFORMATION ONLY AND DO NOT  
CONSTITUTE A GUARANTEE OF THE PROJECT'S  
RELATIONSHIP TO THE REGIONAL CONTEXT.

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FEET

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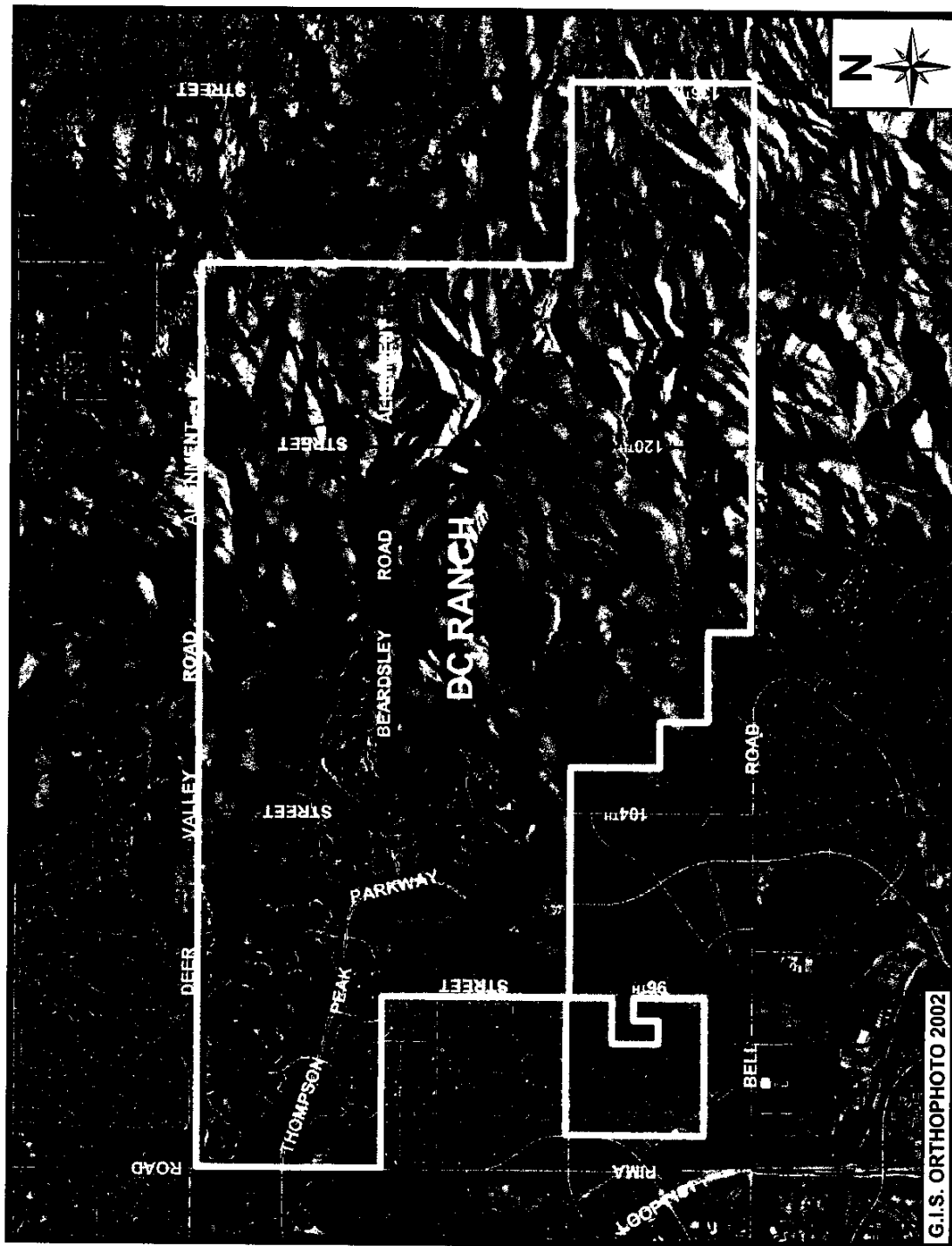
FEET

0 100 200 400

FEET

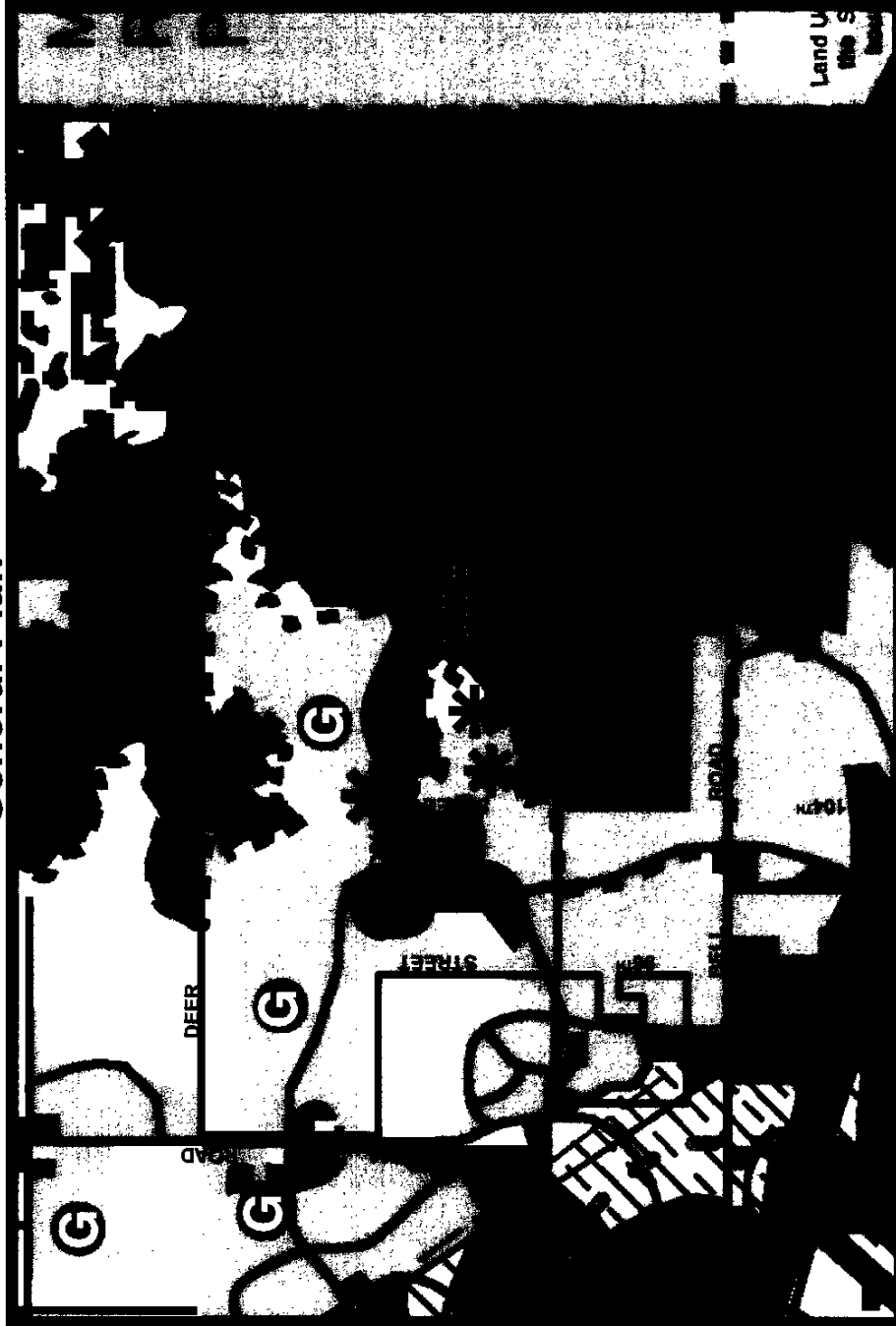
7400 E. DOUGLASS  
RANCH ROAD SUITE 300  
SANTA MONICA, CA 90405  
408-397-7000






DC Ranch

# General Plan

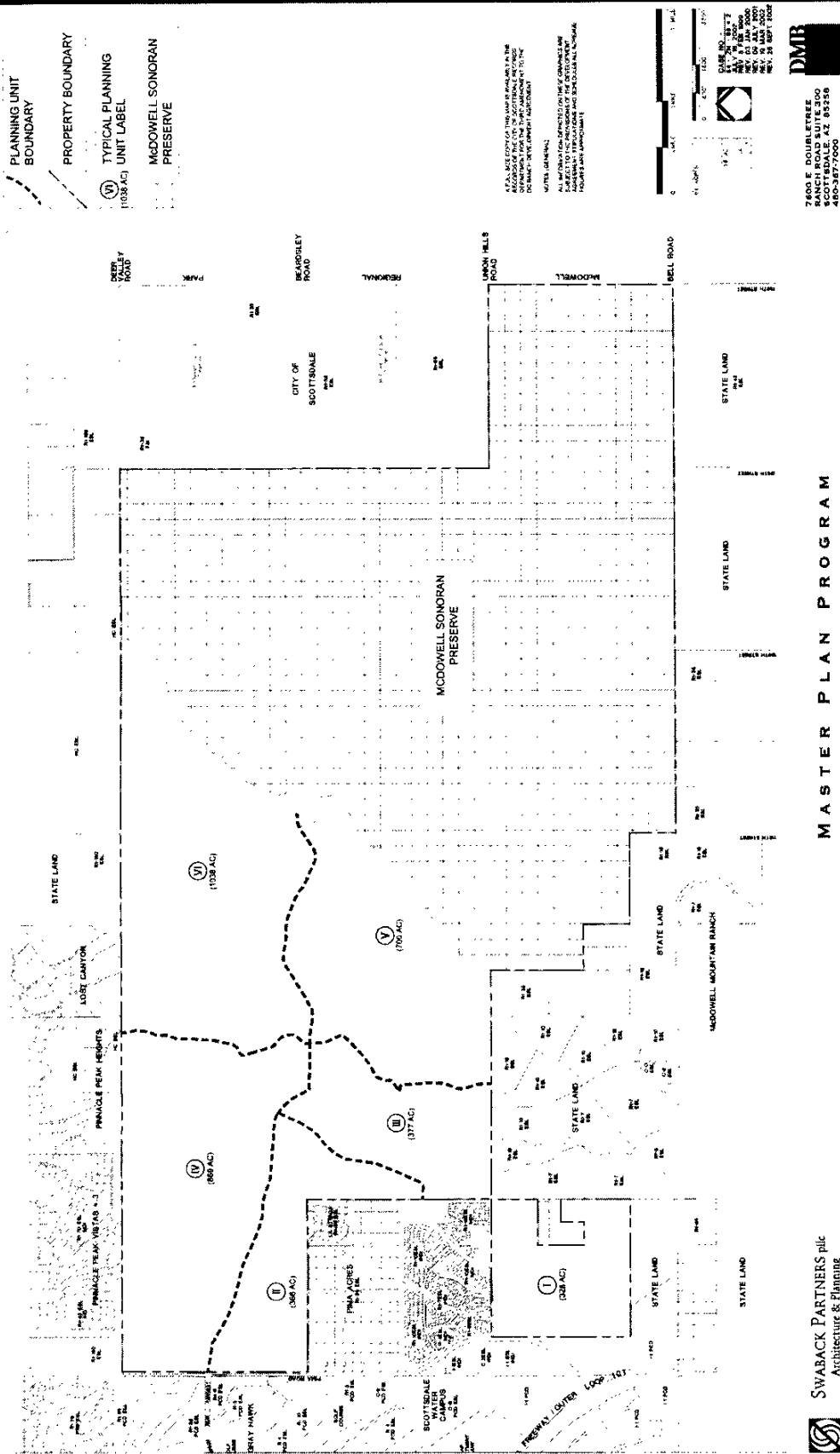


	Rural Neighborhoods		Commercial
	Suburban Neighborhoods		Office
	Urban Neighborhoods		Employment
	Mixed-Use Neighborhoods		Natural Open Space
	Resorts/Tourism		Developed Open Space (Parks)
	Shea Corridor		Developed Open Space (Golf Courses)
	Mayo Support District		Cultural/Institutional or Public Use
	Regional Use District		State Trust Lands under State Land Commissioner's Order #078-2001/2002
	McDowell Sonoran Preserve (as of 3/2002)		
	Recommended Study Boundary of the McDowell Sonoran Preserve		
	City Boundary		





**SCHEDULE - C**





Schedule D - Land Use Budget  
(Revised 11/19/02)

Land Use Budget Summary												
Planning Unit	Total Acres	NAOS (6) (4)		Open Space			Residential Uses (du)		Resort Rooms  Resorts  Rooms  Note (3)	Commercial Uses * (000 sq ft) (5)		
		Minimum NAOS Required	Supplemental NAOS Allocation	COS	CA (4) (6)	Other (24)	1990 Plan Allocation (1)	1995 Plan Max. Density Cap (7)		Preliminary Density Allocation * (7) (5)	PNC	C-O
1	328.25	10	15			17	1,510	N/A	1,200	147	113	
2	368.33	15	32			15	2,159	N/A	650 1,200	150	105	
3	375.38	15	33			42	2,507	N/A	1,350			
4	868.78	75	93	34	20	217	2,123	N/A	550 1,200			
5	699.70	275	84	141	118	125	1,084	N/A	968			
6	1,037.92	300	112	228	130	163	794	N/A	800			
Total Acres	3,678.00	690	369	403	268	579						
Total Units							6,718	6,718	5,518 6,218			
Total Rooms										200 800		
Total S.F.										297	218	
										1,167	600 1,169	551 1,059

N.B.: All Areas Are Approximate

\* Revisions may be approved by project Coordination Manager subject to maximums per stipulations.

(1) Numbers are approx. due to planning unit boundary shifts.

(2) Excludes natural areas in SFR lots outside of bldg envelopes.

(3) The total number of resort rooms exceeding 600 up to a maximum total of 1,000 rooms will reduce the residential yield of 6,718 may be allowed in Planning Units 4, 5, or 6 by reducing

the total number of residential units allowed by a ratio of 7 residential units for every 10 rooms up to a maximum of 200 rooms.

(4) Area of Future Golf Course (162.83 ac) in PUL 6 is listed as open space but zoned R1-L0.

(5) 300 du for the Town Center Mixed Use Area are shown in Residential Uses.

(6) CA is included within adjacent zoning district but itemized here for reference only.

(7) (5) The total number of Residential Units (not including resort rooms) shall not exceed 6,718 5,518.

(8) Retail uses in the PNC and PCC districts will not exceed 900,000 square feet.

(9) (6) Reallocation of minimum NAOS Requirement and Supplemental NAOS Allocation is subject to Schedule G procedures.



WHEN RECORDED, Return to:  
One Stop Shop Records (Donna M. Bronski)  
City of Scottsdale  
7447 E. Indian School Road Suite 100  
Scottsdale, AZ 85251

**THIRD AMENDMENT TO  
DEVELOPMENT AGREEMENT**

This Third Amendment to Development Agreement ("Third Amendment") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2002, between LAWYERS TITLE OF ARIZONA, INC., an Arizona corporation as Trustee of Lawyers Title Trust No. 1698 (the "Trust"), and not personally ("Trustee"), DC LIVESTOCK COMPANY LIMITED PARTNERSHIP ("DC Livestock"), an Arizona limited partnership (collectively "Corrigan-Marley"), DC RANCH L.L.C., an Arizona limited liability company (the "Master Developer"), and the CITY OF SCOTTSDALE, ARIZONA, a municipal corporation ("City").

**R E C I T A L S**

This Third Amendment is predicated upon the following facts:

- A. Arizona Revised Statutes § 9-500.05, authorizes the City to enter into and amend a development agreement with a landowner or any other person having an interest in real property located in the City.
- B. City, Corrigan-Marley and the Master Developer are parties to the Second Amendment to Development Agreement dated October 19, 1998, as recorded in the Official Records of Maricopa County as Document No. 98-0970077 (the "Second Amendment").
- C. Corrigan-Marley and the Master Developer are owners of certain real property located within the incorporated boundaries of the City as more fully set forth in the Second Amendment (the "Property"). Fee title to that portion of the Property owned by Corrigan-Marley is held in trust by Trustee. DC Livestock has a beneficial interest in the Trust. All references to Corrigan-Marley herein shall include both beneficial interest and legal interest.
- D. Because of market and other business reasons, the Master Developer has determined that the project will build out at a lower density than originally planned, but allowable under the previous approvals.
- E. The City concurs that a lower density project meets the approved General Plan and

zoning regulations applicable to the Property, and is desirable for the area.

- F. DMB Property Ventures Limited Partnership ("DMB Property Ventures") is the administrative member of DC Ranch L.L.C., an Arizona limited liability company, formed to purchase the Property from Corrigan-Marley and develop it in Phases. DMB Property Ventures was the Master Developer of the Property.
- G. Pursuant to the Second Amendment, DMB Property Ventures assigned all rights and interests as Master Developer to DC Ranch L.L.C.
- H. This Third Amendment is for the purposes of recognizing that Master Developer has decided to reduce certain commercial, resort and residential densities to that below what was approved under previous agreements between City, Corrigan-Marley and Master Developer and City's agreement that such reduced density is in the best interest of the citizens of the City of Scottsdale and should be made the subject of an agreement to maintain the lower densities.

#### **AGREEMENTS**

NOW, THEREFORE, the parties agree as follows:

- 1. Recitals. The Recitals set forth above are acknowledged by the parties to be true and correct and are incorporated herein by this reference.
- 2. Land Uses. City, Corrigan-Marley and Master Developer agree that it is appropriate to reduce the density and intensities of uses set forth in the Land Use Budget. The density and intensities of uses shall be reduced to those levels set forth in the attached **Exhibit A** ("Revised Land Use Budget"). In accordance with the Revised Land Use Budget, the Land Use and Circulation Map and the Zoning Map shall be as set forth in **Exhibit B** and **Exhibit C**, respectively and shall be utilized by the City to guide all future processes of the City in accordance with the Second Amendment.
- 3. Duration. If not sooner terminated in accordance with the provisions hereof, this Third Amendment shall automatically terminate and be of no further force or effect on July 31, 2020. If the parties mutually determine that a longer period for the performance of the provisions of this Third Amendment is necessary for any reason, the term of this Third Amendment may be extended by a written amendment.
- 4. Previous Agreement. This Third Amendment shall be deemed to amend and supersede the Second Amendment with respect to all terms, provisions, changes and refinements set forth in this Third Amendment. To the extent of any conflict between the Second Amendment and this Third Amendment, including all Exhibits, Stipulations and Schedules, the Third Amendment

shall control. All of the terms, provisions and conditions of the Second Amendment, or any other agreements to which the parties are or may become parties to, which are not expressly modified, amended, or clarified by this Third Amendment shall remain in full force and effect. All capitalized terms contained herein shall be given the meaning set forth for such terms in the Second Amendment.

5. All other provisions of the Second Amendment not in conflict with this Third Amendment shall remain in full force and effect.

6. General Provisions.

6.1 Notices.

(a) Manner of Serving. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith ("Notices") shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by registered or certified United States Postal Service Mail, return receipt requested, postage prepaid to:

If to the City:	The City of Scottsdale 3939 Civic Center Boulevard Scottsdale, Arizona 85251 Attn: Planning and Development General Manager
-----------------	---

(with a separate copy to the City Attorney)

If to DC Livestock:	Fennemore Craig Two North Central Avenue Suite 2200 Phoenix, Arizona 85004-2390 Attn: Gregg Hanks, Esq.
---------------------	---

If to Trustee:	Lawyers Title of Arizona, Inc. 2425 East Camelback Road Suite 700 Phoenix, Arizona 85016 Attn: _____
----------------	--

If to Master Developer:	DC Ranch L.L.C. c/o DMB Associates, Inc. 7600 E. Doubletree Ranch Road Suite 300 Scottsdale, Arizona 85258
-------------------------	--

Attn: Eneas A. Kane, Esq.

With a copy to:

Biskind, Hunt & Taylor, P.L.C.  
11202 N. Tatum Blvd., Suite 330  
Phoenix, Arizona 85028  
Attn: Karrin Kunasek Taylor, Esq.

or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address Notice shall be given at least ten (10) days before the date on which the change is to become effective.

(b) Mailing Effective. Notices, given by mail, shall be deemed delivered 72 hours following deposit in the U.S. Postal Service, in the manner set forth above.

6.2 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Third Amendment shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Third Amendment. Nothing herein or in the Stipulations shall constitute or be deemed to be a waiver by Corrigan-Marley or the Master Developer of their respective rights to request future rezonings or changes in development standards for all or any portion(s) of the Property pursuant to City procedures and requirements existing at the time of the request. Nothing herein contained shall be deemed to be a waiver by the City of the right to act, by approval or denial, on such rezoning or change, to the extent such action would not otherwise be in breach of this Third Amendment. Further, nothing herein or in the Stipulations shall constitute or be deemed to be a waiver or relinquishment by Corrigan-Marley of their rights to continue nonconforming uses of all or any portion(s) of the Property which may exist on the date hereof or have existed as of the date of the Second Amendment, subject to legal principles applicable to such non-conforming uses.

6.3 Attorneys' Fees and Costs. If legal action by either party is brought because of a breach of this Third Amendment or to enforce a provision of this Third Amendment, the prevailing party is entitled to reasonable attorneys' fees and court costs.

6.4 Counterparts. This Third Amendment may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

6.5 Headings. The description headings of the paragraphs of this Third Amendment are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Third Amendment.

6.6 Severability. If any provision of this Third Amendment is declared void or unenforceable, the provisions shall be severed from this Third Amendment, which shall

otherwise remain in full force and effect, provided that the overall intent of the parties is not materially vitiated by such severability.

6.7 Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Third Amendment. The parties agree that venue for any action commenced in connection with this Third Amendment shall be proper only in a court of competent jurisdiction located in Maricopa County, Arizona, and the Parties hereby waive any right to object to such venue.

6.8 Recordation. No later than ten (10) days after this Third Amendment has been executed by the City, Corrigan-Marley and the Master Developer, it shall be recorded in its entirety, by the City, in the Official Records of Maricopa County, Arizona.

6.9 Default, Remedies. If any party to this Third Amendment breaches any provision of this Third Amendment, the non-defaulting party shall be entitled to all remedies available at both law and in equity including specific performance.

6.10 Authority. The parties to this Third Amendment represent to each other that they have full power and authority to enter into this Third Amendment, and that all necessary actions have been taken to give full force and effect to this Third Amendment. Master Developer represents and warrants that it is duly formed and validly existing under the laws of Arizona, and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Master Developer and the City warrant to each other that the individuals executing the Third Amendment on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. Master Developer represents to the City that by entering into this Third Amendment Master Developer has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Third Amendment.

6.11 Estoppel. Each of the parties hereto covenant and agree with the other to provide within fifteen (15) days of written request from the other an estoppel certificate signed by a duly authorized representative of such party indicating that the other party(ies) are not then in default under any of the obligations pursuant to this Third Amendment.

6.12 Conflict of Interest. This Third Amendment is subject to the conflict of interest provisions of A.R.S. Sec. 38-511.

IN WITNESS WHEREOF, the parties have executed this Third Amendment as of the day and year first above written.

CITY:

CITY OF SCOTTSDALE, ARIZONA, a municipal  
corporation

By: \_\_\_\_\_  
Mary Manross, Mayor

Attest:

\_\_\_\_\_  
Sonia Robertson, City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

CORRIGAN-MARLEY

TRUSTEE:

LAWYERS TITLE OF ARIZONA, INC., an  
Arizona corporation, as Trustee of Lawyers Title  
Trust No. 1698, and not personally

By: \_\_\_\_\_

Its: \_\_\_\_\_

DC LIVESTOCK:

DC LIVESTOCK COMPANY LIMITED  
PARTNERSHIP, an Arizona limited  
partnership

By: DC Management Company, a corporation  
General Partner

By: \_\_\_\_\_  
Its: General Partner

Attest: \_\_\_\_\_  
Secretary

MASTER DEVELOPER

DC RANCH L.L.C., an Arizona limited liability  
company

By: DMB PROPERTY VENTURES LIMITED  
PARTNERSHIP, a Delaware limited  
partnership, Administrative Member

By: DMB GP, INC., an Arizona  
corporation, General Partner

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA       §  
                                  §  
County of Maricopa       §

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by  
Mary Manross, Mayor of the City of Scottsdale, Arizona, a municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF ARIZONA       §  
                                  §  
County of Maricopa       §

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by  
\_\_\_\_\_, the \_\_\_\_\_ of LAWYERS TITLE OF ARIZONA,  
INC., an Arizona corporation, as Trustee of Lawyers Title Trust No. 1698, and not personally, on  
behalf of the corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF ARIZONA       §  
                                  §  
County of Maricopa       §

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by \_\_\_\_\_, the President of DC Management Company, a corporation, General Partner of DC Livestock Company Limited Partnership, an Arizona limited partnership, for and on behalf thereof.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF ARIZONA               §  
                                  §  
County of Maricopa           §

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by \_\_\_\_\_, the \_\_\_\_\_ of DMB GP, Inc., an Arizona corporation, General Partner of DMB Property Ventures Limited Partnership, a Delaware limited partnership, Administrative Member of DC RANCH L.L.C., an Arizona limited liability company, for and on behalf thereof.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**DRAFT**  
**11/6/02 #1**

**NO. 890074A**

**EXHIBIT A**

**REVISED LAND USE BUDGET**

**DRAFT**  
**11/6/02 #1**

**NO. 890074A**

**EXHIBIT B**

**REVISED LAND USE AND CIRCULATION MAP**

**DRAFT**  
**11/6/02 #1**

**NO. 890074A**

**EXHIBIT C**

**REVISED ZONING MAP**



RESOLUTION NO. 6201

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AMENDMENT TO DEVELOPMENT AGREEMENT NO. 890074A FOR PROPERTY LOCATED GENERALLY BETWEEN PIMA ROAD AND THE MCDOWELL MOUNTAINS, AND DEER VALLEY ROAD AND UNION HILLS ROAD IN SCOTTSDALE, ARIZONA.

WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into development agreements with persons having an interest in real property located in the City; and

WHEREAS, on March 15, 1990, the City Council approved Development Agreement No. 890074 for property located at the southeast corner of Pima Road and Thompson Peak Parkway in Scottsdale, Arizona; and

WHEREAS, the City and Lawyers Title of Arizona, Inc., an Arizona corporation as Trustee of Lawyers Title Trust No. 1698, DC Livestock Company Limited Partnership, and DC Ranch, LLC have voluntarily negotiated the attached Third Amendment to Development Agreement;

NOW, THEREFORE, BE IT RESOLVED, by the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. That Mayor Mary Manross is authorized to execute Third Amendment to Development Agreement No. 890074A, attached as Exhibit 1 to this Resolution.

Section 2. That the City Clerk is hereby directed to record the amended Development Agreement with the Maricopa County Recorder within ten (10) days of its execution by all parties.

7<sup>th</sup> PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this day of January, 2003.

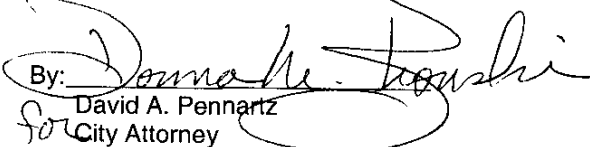
ATTEST

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Sonia Robertson  
City Clerk

By: \_\_\_\_\_  
Mary Manross  
Mayor

APPROVED AS TO FORM:

By:   
David A. Pennartz  
City Attorney

ATTACHMENT #8



WHEN RECORDED, Return to:

One Stop Shop Records (Donna M. Bronski)  
City of Scottsdale  
7447 E. Indian School Road Suite 100  
Scottsdale, AZ 85251

THIRD AMENDMENT TO  
DEVELOPMENT AGREEMENT

This Third Amendment to Development Agreement ("Third Amendment") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2002, between LAWYERS TITLE OF ARIZONA, INC., an Arizona corporation as Trustee of Lawyers Title Trust No. 1698 (the "Trust"), and not personally ("Trustee"), DC LIVESTOCK COMPANY LIMITED PARTNERSHIP ("DC Livestock"), an Arizona limited partnership (collectively "Corrigan-Marley"), DC RANCH L.L.C., an Arizona limited liability company (the "Master Developer"), and the CITY OF SCOTTSDALE, ARIZONA, a municipal corporation ("City").

R E C I T A L S

This Third Amendment is predicated upon the following facts:

- A. Arizona Revised Statutes § 9-500.05, authorizes the City to enter into and amend a development agreement with a landowner or any other person having an interest in real property located in the City.
- B. City, Corrigan-Marley and the Master Developer are parties to the Second Amendment to Development Agreement dated October 19, 1998, as recorded in the Official Records of Maricopa County as Document No. 98-0970077 (the "Second Amendment").
- C. Corrigan-Marley and the Master Developer are owners of certain real property located within the incorporated boundaries of the City as more fully set forth in the Second Amendment (the "Property"). Fee title to that portion of the Property owned by Corrigan-Marley is held in trust by Trustee. DC Livestock has a beneficial interest in the Trust. All references to Corrigan-Marley herein shall include both beneficial interest and legal interest.
- D. Because of market and other business reasons, the Master Developer has determined that the project will build out at a lower density than originally planned, but allowable under the previous approvals.
- E. The City concurs that a lower density project meets the approved General Plan and

zoning regulations applicable to the Property, and is desirable for the area.

- F. DMB Property Ventures Limited Partnership ("DMB Property Ventures") is the administrative member of DC Ranch L.L.C., an Arizona limited liability company, formed to purchase the Property from Corrigan-Marley and develop it in Phases. DMB Property Ventures was the Master Developer of the Property.
- G. Pursuant to the Second Amendment, DMB Property Ventures assigned all rights and interests as Master Developer to DC Ranch L.L.C.
- H. This Third Amendment is for the purposes of recognizing that Master Developer has decided to reduce certain commercial, resort and residential densities to that below what was approved under previous agreements between City, Corrigan-Marley and Master Developer and City's agreement that such reduced density is in the best interest of the citizens of the City of Scottsdale and should be made the subject of an agreement to maintain the lower densities.

#### AGREEMENTS

NOW, THEREFORE, the parties agree as follows:

- 1. Recitals. The Recitals set forth above are acknowledged by the parties to be true and correct and are incorporated herein by this reference.
- 2. Land Uses. City, Corrigan-Marley and Master Developer agree that it is appropriate to reduce the density and intensities of uses set forth in the Land Use Budget. The density and intensities of uses shall be reduced to those levels set forth in the attached **Exhibit A** ("Revised Land Use Budget"). In accordance with the Revised Land Use Budget, the Land Use and Circulation Map and the Zoning Map shall be as set forth in **Exhibit B** and **Exhibit C**, respectively and shall be utilized by the City to guide all future processes of the City in accordance with the Second Amendment.
- 3. Duration. If not sooner terminated in accordance with the provisions hereof, this Third Amendment shall automatically terminate and be of no further force or effect on July 31, 2020. If the parties mutually determine that a longer period for the performance of the provisions of this Third Amendment is necessary for any reason, the term of this Third Amendment may be extended by a written amendment.
- 4. Previous Agreement. This Third Amendment shall be deemed to amend and supersede the Second Amendment with respect to all terms, provisions, changes and refinements set forth in this Third Amendment. To the extent of any conflict between the Second Amendment and this Third Amendment, including all Exhibits, Stipulations and Schedules, the Third Amendment

shall control. All of the terms, provisions and conditions of the Second Amendment, or any other agreements to which the parties are or may become parties to, which are not expressly modified, amended, or clarified by this Third Amendment shall remain in full force and effect. All capitalized terms contained herein shall be given the meaning set forth for such terms in the Second Amendment.

5. All other provisions of the Second Amendment not in conflict with this Third Amendment shall remain in full force and effect.

6. General Provisions.

6.1 Notices.

(a) Manner of Serving. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith ("Notices") shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by registered or certified United States Postal Service Mail, return receipt requested, postage prepaid to:

If to the City:                      The City of Scottsdale  
3939 Civic Center Boulevard  
Scottsdale, Arizona 85251  
Attn: Planning and Development General  
Manager

(with a separate copy to the City Attorney)

If to DC Livestock:                Fennemore Craig  
Two North Central Avenue  
Suite 2200  
Phoenix, Arizona 85004-2390  
Attn: Gregg Hanks, Esq.

If to Trustee:                      Lawyers Title of Arizona, Inc.  
2425 East Camelback Road  
Suite 700  
Phoenix, Arizona 85016  
Attn: \_\_\_\_\_

If to Master Developer:         DC Ranch L.L.C.  
c/o DMB Associates, Inc.  
7600 E. Doubletree Ranch Road  
Suite 300  
Scottsdale, Arizona 85258

Attn: Eneas A. Kane, Esq.

With a copy to:

Biskind, Hunt & Taylor, P.L.C.  
11202 N. Tatum Blvd., Suite 330  
Phoenix, Arizona 85028  
Attn: Karrin Kunasek Taylor, Esq.

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IN WITNESS WHEREOF, the parties have executed this Third Amendment as of the day and year first above written.

CITY:

CITY OF SCOTTSDALE, ARIZONA, a municipal  
corporation

By: \_\_\_\_\_  
Mary Manross, Mayor

Attest:

\_\_\_\_\_  
Sonia Robertson, City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

CORRIGAN-MARLEY

TRUSTEE:

LAWYERS TITLE OF ARIZONA, INC., an  
Arizona corporation, as Trustee of Lawyers Title  
Trust No. 1698, and not personally

By: \_\_\_\_\_

Its: \_\_\_\_\_

DC LIVESTOCK:

DC LIVESTOCK COMPANY LIMITED  
PARTNERSHIP, an Arizona limited  
partnership

By: DC Management Company, a corporation  
General Partner

By: \_\_\_\_\_  
Its: General Partner

Attest: \_\_\_\_\_  
Secretary

MASTER DEVELOPER

DC RANCH L.L.C., an Arizona limited liability  
company

By: DMB PROPERTY VENTURES LIMITED  
PARTNERSHIP, a Delaware limited  
partnership, Administrative Member

By: DMB GP, INC., an Arizona  
corporation, General Partner

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA     §  
                                  §  
County of Maricopa     §

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by  
Mary Manross, Mayor of the City of Scottsdale, Arizona, a municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF ARIZONA     §  
                                  §  
County of Maricopa     §

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by  
\_\_\_\_\_, the \_\_\_\_\_ of LAWYERS TITLE OF ARIZONA,  
INC., an Arizona corporation, as Trustee of Lawyers Title Trust No. 1698, and not personally, on  
behalf of the corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF ARIZONA       §  
                                  §  
County of Maricopa       §

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by \_\_\_\_\_, the President of DC Management Company, a corporation, General Partner of DC Livestock Company Limited Partnership, an Arizona limited partnership, for and on behalf thereof.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF ARIZONA               §  
                                  §  
County of Maricopa           §

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by \_\_\_\_\_, the \_\_\_\_\_ of DMB GP, Inc., an Arizona corporation, General Partner of DMB Property Ventures Limited Partnership, a Delaware limited partnership, Administrative Member of DC RANCH L.L.C., an Arizona limited liability company, for and on behalf thereof.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**DRAFT**  
**11/6/02 #1**

**NO. 890074A**

**EXHIBIT A**

**REVISED LAND USE BUDGET**

**DRAFT**  
**11/6/02 #1**

**NO. 890074A**

**EXHIBIT B**

**REVISED LAND USE AND CIRCULATION MAP**

**DRAFT**  
**11/6/02 #1**

**NO. 890074A**

**EXHIBIT C**

**REVISED ZONING MAP**





# CITY COUNCIL REPORT



MEETING DATE: January 7, 2003

ITEM NO. 5

GOAL: Coordinate Planning to Balance Infrastructure

## SUBJECT

**Madrid Subdivision Final Plat**

## REQUEST

To develop an eighty-five (85) lot single-family subdivision on a parcel of approximately 57 acres.  
5-PP-2002

### Related Cases:

1-ZN-2001; 1-GP-2002

## OWNER

Estate of Linda Moore

## APPLICANT CONTACT

Beus Gilbert  
John Berry  
602-234-5811

## LOCATION

North and south of Frank Lloyd Wright, at Thunderbird Road

## BACKGROUND

### Zoning.

The site is zoned Single Family Residential District (R1-10).

### General Plan.

The General Plan Land Use Element designates the property as Suburban Neighborhoods (1.1 - 7.9 homes per acre).

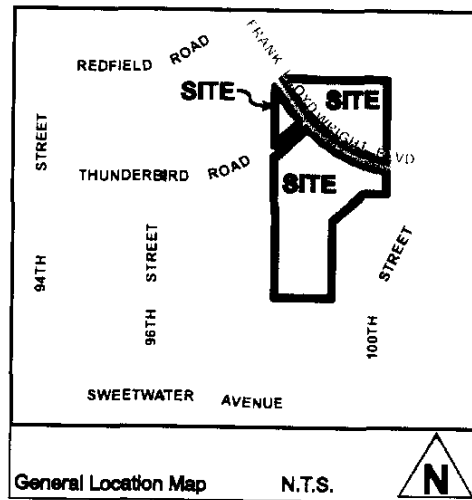
### Context.

This subdivision is located at the intersection of Thunderbird Road and Frank Lloyd Wright Boulevard. Single-family homes surround the site to the south, west, and north, providing a density of approximately 3.5 homes per acre. A school, public park, and small commercial area are located to the east of the site. Thunderbird Road and Frank Lloyd Wright Boulevard split the property.

## APPLICANT'S PROPOSAL

### Goal/Purpose of Request.

The purpose of the City Council final plat approval is to authorize the recordation of the final plat with the Maricopa County records office. The City Council approval process is the last step to confirm the plats consistency with the preliminary plat approval prior to recordation with the county.



**IMPACT ANALYSIS****Traffic.**

Traffic will be distributed to Frank Lloyd Wright Boulevard and Thunderbird Road. Capacity analyses for the proposed development indicate that the intersection of Frank Lloyd Wright Boulevard and Thunderbird Road will provide a satisfactory level of service with the installation of a traffic signal. The signalized intersection of Frank Lloyd Wright Boulevard and 100<sup>th</sup> Street will continue to operate acceptably. There is an existing street stub-out to this property via 99<sup>th</sup> Way from the South. The adjacent neighborhood has said that they do not want to have a street connection to this project. This stub has been designed to transition into open space. This development will operate satisfactorily as a component of the area street network.

**Schools.**

The Scottsdale Unified School District was notified during the rezoning and preliminary plat processes to determine adequate school capacity. Aztec School abuts the east side of the subdivision. The school district did not indicate any capacity issues to Staff at the time of rezoning. The applicant and the District have coordinated fencing details and access provisions between the subdivision and the school.

**Parking.**

- Parking will be provided per typical single-family residential.
- There is no common area parking for this subdivision.

**Drainage.**

Drainage will be provided within large open space tracts and retained through a series of connected stormwater catch basins.

**Trails.**

Pedestrian connections will be provided within large open space tracts.

**Water/Sewer.**

Waterlines and sewer lines shall be constructed by the developer and dedicated to the city for maintenance.

**Police/Fire.**

This plat has been review by Rural/Metro Fire Department and it conforms to the minimum requirements for fire apparatus access.

**Community Involvement.**

During the rezoning and preliminary plat process, the applicant held multiple public involvement meetings, and has agreed to a number of conditions with the surrounding neighborhood. The applicant continues to work with the surrounding neighborhood regarding easements and construction processes.

**Other Boards and Commissions.**

The Development Review Board approved the preliminary plat on June 6, 2002.

**STAFF**

**RECOMMENDATION**

**Recommended Approach:**

Staff recommends that the final plat be approved as presented.

**Proposed Next Steps:**

Approval will enable the final plat to be recorded, establishing lots, streets, easements and common tracts.

**RESPONSIBLE DEPT(S)**

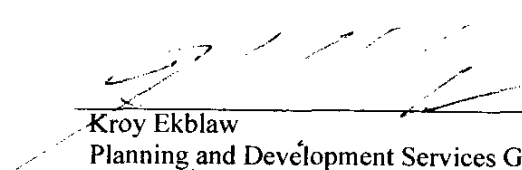
**Planning and Development Services Department**  
Current Planning Services

**STAFF CONTACT(S)**

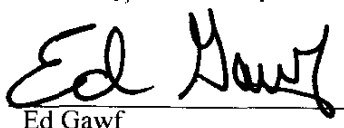
Tim Curtis  
Project Coordination Manager  
480-312-4210  
E-mail: [tcurtis@www.ScottsdaleAZ.gov](mailto:tcurtis@www.ScottsdaleAZ.gov)

Jeff Fisher  
Interim Plan Review and Permit Services Director  
480-312-7619  
E-mail: [jefisher@ci.scottsdale.az.us](mailto:jefisher@ci.scottsdale.az.us)

**APPROVED BY**

  
Kroy Ekblaw  
Planning and Development Services General Manager

12/13/02  
13/12  
Date

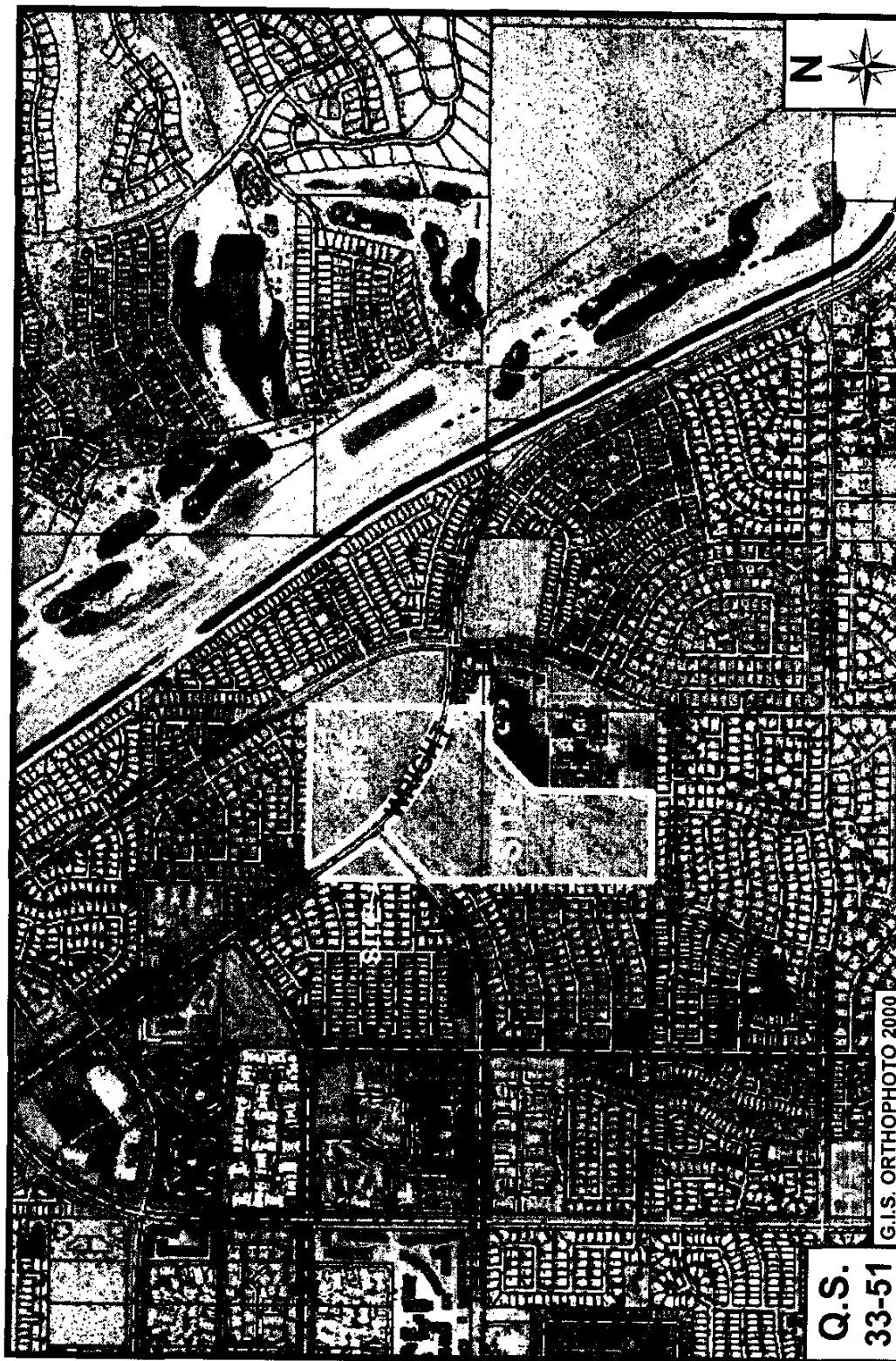
  
Ed Gawf  
Deputy City Manager

12/13/02  
Date

**ATTACHMENTS**

1. Aerial Map
2. Final Plat
3. Preliminary Plat
4. Development Review Board Staff Report
5. Development Review Board Minutes





5-PP-2002

Madrid

ATTACHMENT 1







COUNTY RECORDER





Survey Consulting Inc.  
4211 Santa Anita Street  
Pasadena, AZ 805  
Tel. 925.438.2200  
Fax. 925.431.6562  
www.surveysci.com

**Stanlex**  
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- Legend**
- \* B CORNER OF SUBDIVISION, SURVEY MONUMENT TO BE INSTALLED AS TYPE "B" PER LMS ACT 180-1
  - \* AC CORNER OF SUBDIVISION, SURVEY MONUMENT TO BE INSTALLED AS TYPE "A" PER LMS ACT 180-1
  - \* SPLIT CORNER SURVEY MONUMENT TO BE INSTALLED AS TYPE "S" PER LMS ACT 180-1
  - O CORNER OF SUBDIVISION, FOUND MONUMENT AS SHOWN
  - FOUND FLUSH BRASS CAP
  - FOUND BRASS CAP IN HAMP-HOLE

- CT CLIMATE TABLE NUMBER
- L1 LINE TABLE NUMBER
- PAC PUBLIC UTILITY EASEMENT
- R/W RIGHT OF WAY
- REL BUILDING SETBACK LINE
- ELF RAFTED LANDSCAPE EASEMENT
- VME VORTEX/UP NON ACCESS EASEMENT
- NOTE: SURVEY MONUMENT ON CORNER PROPERTY, PER CITY OF PASADENA, CHARTER, SECTION 1, IF PERMANENT
- NOTE: SURVEY MONUMENT ON CORNER PROPERTY, PER CITY OF PASADENA, CHARTER, SECTION 1, IF PERMANENT
- NOTE: SURVEY MONUMENT ON CORNER PROPERTY, PER CITY OF PASADENA, CHARTER, SECTION 1, IF PERMANENT



**Surveyor**  
HARCOCK M.T.H. BUILDERS, INC.  
10000 N. 10TH AVENUE, SUITE 200  
SCOTTSDALE, ARIZONA 85257  
Telephone (480) 353-8700

**Client**  
A GATED COMMUNITY  
SCHEDULED ACTION

**Title**  
FINAL PLAT FOR MAJORITY

**Project No.**  
07000000

**Scale**  
1" = 50'

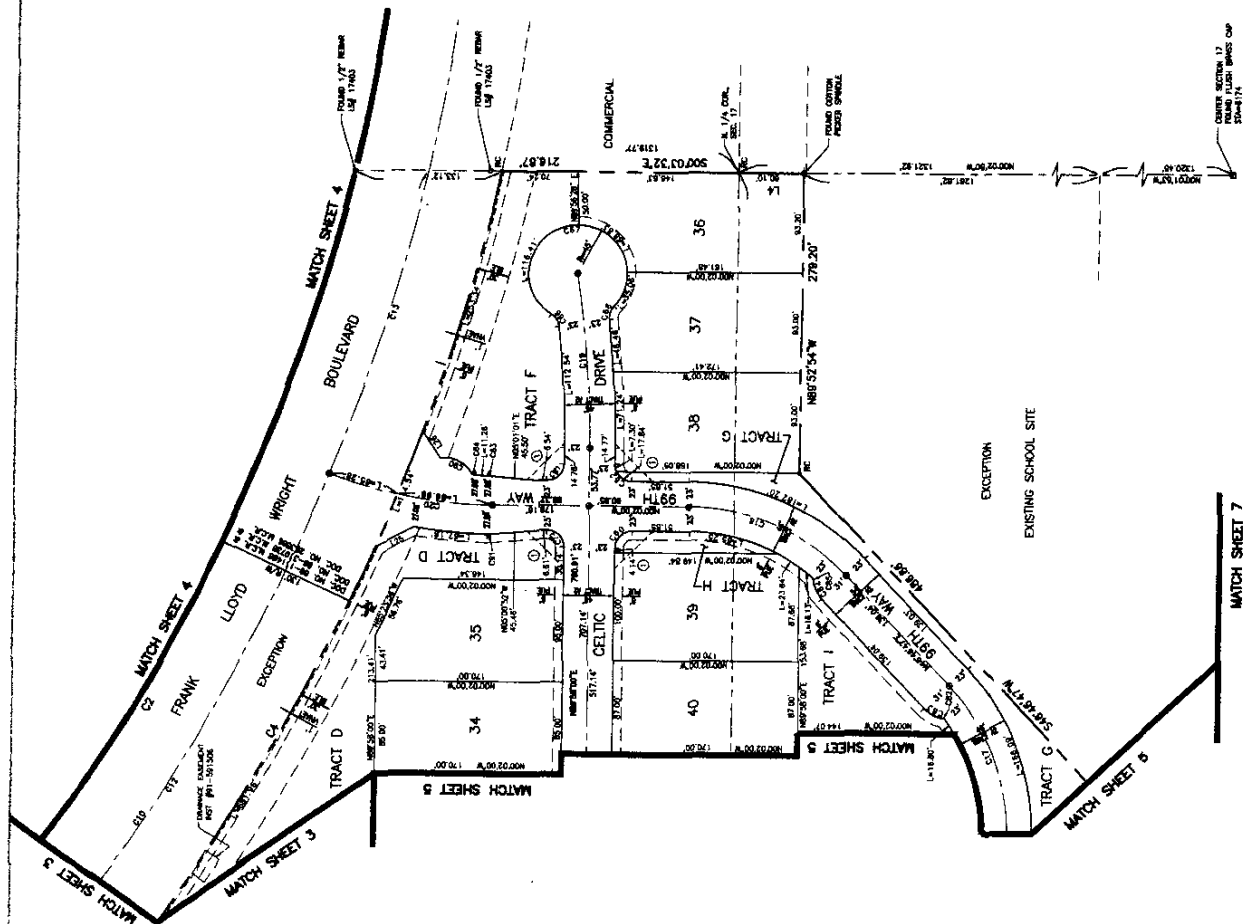
**Drawn by**  
J. Smith

**Number**  
6 of 7

**Date**  
07/07/20



SCALE: 1" = 50'



LINE	LENGTH	BEARING	AREA
1	100.00	N 00° 00' 00" E	100.00
2	100.00	E 00° 00' 00" S	100.00
3	100.00	S 00° 00' 00" W	100.00
4	100.00	W 00° 00' 00" N	100.00
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17	100.00	N 00° 00' 00" E	100.00
18	100.00	E 00° 00' 00" S	100.00
19	100.00	S 00° 00' 00" W	100.00
20	100.00	W 00° 00' 00" N	100.00

LINE	LENGTH	BEARING
1	100.00	N 00° 00' 00" E
2	100.00	E 00° 00' 00" S
3	100.00	S 00° 00' 00" W
4	100.00	W 00° 00' 00" N

COUNTY RECORDER

EXEMPTION  
EXISTING SCHOOL SITE

MATCH SHEET 7

MATCH SHEET 8

MATCH SHEET 9

Surveying Inc.  
 1111 N. 17th St.  
 Phoenix, AZ 85006  
 Tel: 602-433-1555  
 Fax: 602-433-1555  
 www.surveyinginc.com

# Survey 1" = 50'

The undersigned, Surveyor, do hereby certify that the foregoing is a true and correct copy of the original survey as shown to me by the owner thereof, and that the same has been compared with the original and found to be correct.

CORNER OF SUBDIVISION, SWEETWATER RANCH, PG. 17, BK. 255, PG. 18, M.C.R. 1, BEING AS SHOWN BY THE RECORD MAP.

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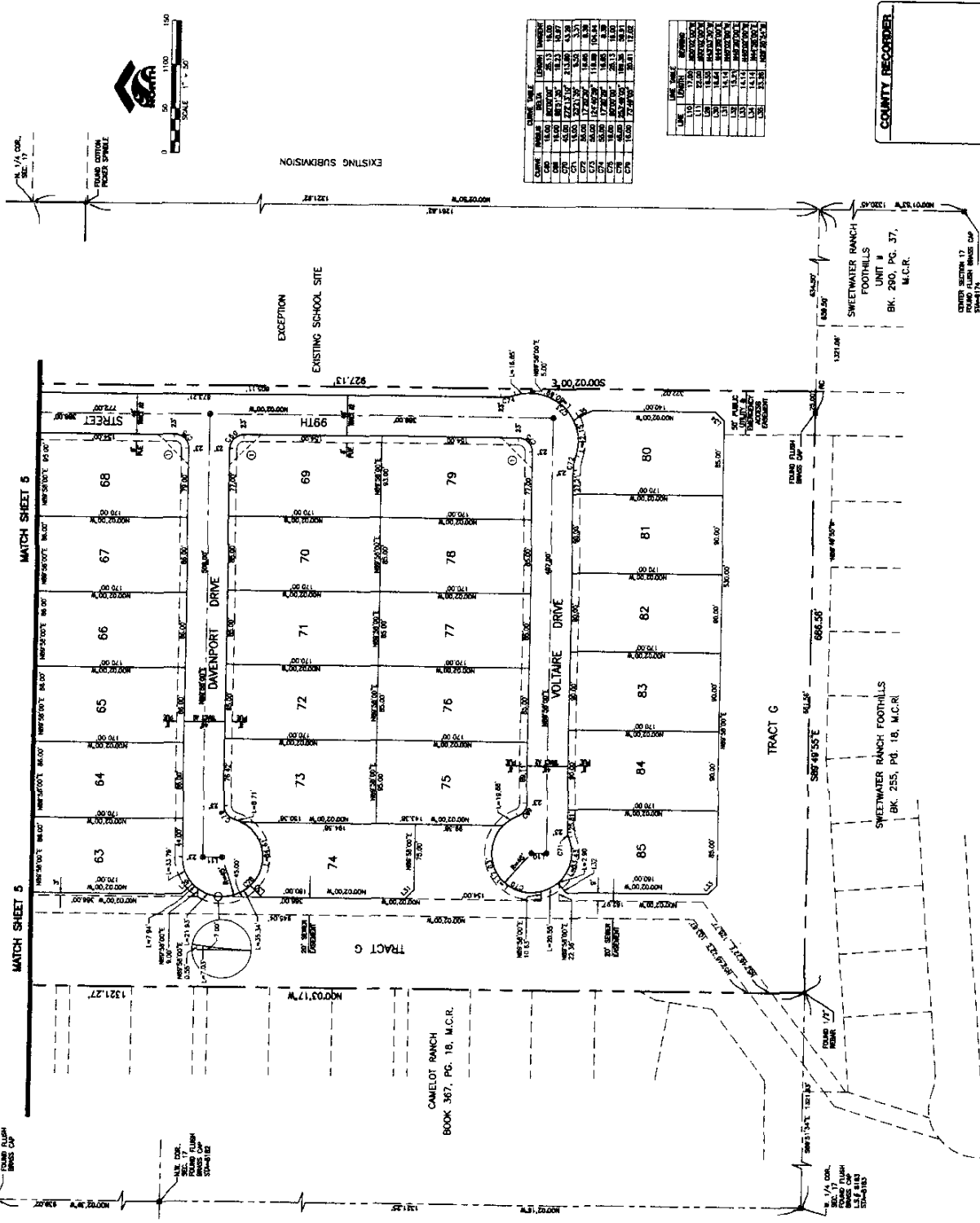
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LINE	BEARING	DIST.	AREA	PERIMETER
1	N 0° 00' 00" E	100.00	100.00	100.00
2	N 0° 00' 00" E	100.00	100.00	100.00
3	N 0° 00' 00" E	100.00	100.00	100.00
4	N 0° 00' 00" E	100.00	100.00	100.00
5	N 0° 00' 00" E	100.00	100.00	100.00
6	N 0° 00' 00" E	100.00	100.00	100.00
7	N 0° 00' 00" E	100.00	100.00	100.00
8	N 0° 00' 00" E	100.00	100.00	100.00
9	N 0° 00' 00" E	100.00	100.00	100.00
10	N 0° 00' 00" E	100.00	100.00	100.00

LINE	BEARING	DIST.	AREA	PERIMETER
11	N 0° 00' 00" E	100.00	100.00	100.00
12	N 0° 00' 00" E	100.00	100.00	100.00
13	N 0° 00' 00" E	100.00	100.00	100.00
14	N 0° 00' 00" E	100.00	100.00	100.00
15	N 0° 00' 00" E	100.00	100.00	100.00
16	N 0° 00' 00" E	100.00	100.00	100.00
17	N 0° 00' 00" E	100.00	100.00	100.00
18	N 0° 00' 00" E	100.00	100.00	100.00
19	N 0° 00' 00" E	100.00	100.00	100.00
20	N 0° 00' 00" E	100.00	100.00	100.00

COUNTY RECORDER  
 1" = 50'

HANCOCK M.T.H. BUILDERS, INC.  
 8001 PRINCESS WAY, SUITE 200  
 TOLSON, ARIZONA 85205  
 MADRID  
 A GATED COMMUNITY  
 Scottsdale, Arizona

FINAL PLAT  
 FOR  
 MADRID





Sander Gilman, M.D.,  
 3018 S.W. 49th St., Apt.  
 Portland, OR 97219  
 503/844-3355  
 fax: 503/993-2000  
 E-mail: gilman@uic.edu  
 www.gilman.org

# Stanley

[illegible]

### LEGEND

- | NAME       | DATE       | TIME  | LOCATION | REMARKS             |
|------------|------------|-------|----------|---------------------|
| JOHN DOE   | 10/10/2023 | 14:30 | Room 101 | Completed task      |
| JANE SMITH | 10/10/2023 | 15:00 | Room 102 | Meeting with client |
| JOHN DOE   | 10/10/2023 | 16:00 | Room 101 | Reviewing documents |
| JANE SMITH | 10/10/2023 | 17:00 | Room 102 | Preparing report    |
| JOHN DOE   | 10/10/2023 | 18:00 | Room 101 | Final check         |
| JANE SMITH | 10/10/2023 | 19:00 | Room 102 | Home                |

1969 C. 3071, 3072, 3073, 3074, 3075, 3076, 3077, 3078, 3079, 3080, 3081, 3082, 3083, 3084, 3085, 3086, 3087, 3088, 3089, 3090, 3091, 3092, 3093, 3094, 3095, 3096, 3097, 3098, 3099, 3100, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, 3112, 3113, 3114, 3115, 3116, 3117, 3118, 3119, 3120, 3121, 3122, 3123, 3124, 3125, 3126, 3127, 3128, 3129, 3130, 3131, 3132, 3133, 3134, 3135, 3136, 3137, 3138, 3139, 3140, 3141, 3142, 3143, 3144, 3145, 3146, 3147, 3148, 3149, 3150, 3151, 3152, 3153, 3154, 3155, 3156, 3157, 3158, 3159, 3160, 3161, 3162, 3163, 3164, 3165, 3166, 3167, 3168, 3169, 3170, 3171, 3172, 3173, 3174, 3175, 3176, 3177, 3178, 3179, 3180, 3181, 3182, 3183, 3184, 3185, 3186, 3187, 3188, 3189, 3190, 3191, 3192, 3193, 3194, 3195, 3196, 3197, 3198, 3199, 3200, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208, 3209, 3210, 3211, 3212, 3213, 3214, 3215, 3216, 3217, 3218, 3219, 3220, 3221, 3222, 3223, 3224, 3225, 3226, 3227, 3228, 3229, 3230, 3231, 3232, 3233, 3234, 3235, 3236, 3237, 3238, 3239, 3240, 3241, 3242, 3243, 3244, 3245, 3246, 3247, 3248, 3249, 3250, 3251, 3252, 3253, 3254, 3255, 3256, 3257, 3258, 3259, 3260, 3261, 3262, 3263, 3264, 3265, 3266, 3267, 3268, 3269, 3270, 3271, 3272, 3273, 3274, 3275, 3276, 3277, 3278, 3279, 3280, 3281, 3282, 3283, 3284, 3285, 3286, 3287, 3288, 3289, 3290, 3291, 3292, 3293, 3294, 3295, 3296, 3297, 3298, 3299, 3300, 3301, 3302, 3303, 3304, 3305, 3306, 3307, 3308, 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317, 3318, 3319, 3320, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329, 3330, 3331, 3332, 3333, 3334, 3335, 3336, 3337, 3338, 3339, 3340, 3341, 3342, 3343, 3344, 3345, 3346, 3347, 3348, 3349, 3350, 3351, 3352, 3353, 3354, 3355, 3356, 3357, 3358, 3359, 3360, 3361, 3362, 3363, 3364, 3365, 3366, 3367, 3368, 3369, 3370, 3371, 3372, 3373, 3374, 3375, 3376, 3377, 3378, 3379, 3380, 3381, 3382, 3383, 3384, 3385, 3386, 3387, 3388, 3389, 3390, 3391, 3392, 3393, 3394, 3395, 3396, 3397, 3398, 3399, 3400, 3401, 3402, 3403, 3404, 3405, 3406, 3407, 3408, 3409, 3410, 3411, 3412, 3413, 3414, 3415, 3416, 3417, 3418, 3419, 3420, 3421, 3422, 3423, 3424, 3425, 3426, 3427, 3428, 3429, 3430, 3431, 3432, 3433, 3434, 3435, 3436, 3437, 3438, 3439, 3440, 3441, 3442, 3443, 3444, 3445, 3446, 3447, 3448, 3449, 3450, 3451, 3452, 3453, 3454, 3455, 3456, 3457, 3458, 3459, 3460, 3461, 3462, 3463, 3464, 3465, 3466, 3467, 3468, 3469, 3470, 3471, 3472, 3473, 3474, 3475, 3476, 3477, 3478, 3479, 3480, 3481, 3482, 3483, 3484, 3485, 3486, 3487, 3488, 3489, 3490, 3491, 3492, 3493, 3494, 3495, 3496, 3497, 3498, 3499, 3500, 3501, 3502, 3503, 3504, 3505, 3506, 3507, 3508, 3509, 3510, 3511, 3512, 3513, 3514, 3515, 3516, 3517, 3518, 3519, 3520, 3521, 3522, 3523, 3524, 3525, 3526, 3527, 3528, 3529, 3530, 3531, 3532, 3533, 3534, 3535, 3536, 3537, 3538, 3539, 3540, 3541, 3542, 3543, 3544, 3545, 3546, 3547, 3548, 3549, 3550, 3551, 3552, 3553, 3554, 3555, 3556, 3557, 3558, 3559, 3560, 3561, 3562, 3563, 3564, 3565, 3566, 3567, 3568, 3569, 3570, 3571, 3572, 3573, 3574, 3575, 3576, 3577, 3578, 3579, 3580, 3581, 3582, 3583, 3584, 3585, 3586, 3587, 3588, 3589, 3590, 3591, 3592, 3593, 3594, 3595, 3596, 3597, 3598, 3599, 3600, 3601, 3602, 3603, 3604, 3605, 3606, 3607, 3608, 3609, 3610, 3611, 3612, 3613, 3614, 3615, 3616, 3617, 3618, 3619, 3620, 3621, 3622, 3623, 3624, 3625, 3626, 3627, 3628, 3629, 3630, 3631, 3632, 3633, 3634, 3635, 3636, 3637, 3638, 3639, 3640, 3641, 3642, 3643, 3644, 3645, 3646, 3647, 3648, 3649, 3650, 3651, 3652, 3653, 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, 3664, 3665, 3666, 3667, 3668, 3669, 3670, 3671, 3672, 3673, 3674, 3675, 3676, 3677, 3678, 3679, 3680, 3681, 3682, 3683, 3684, 3685, 3686, 3687, 3688, 3689, 3690, 3691, 3692, 3693, 3694, 3695, 3696, 3697, 3698, 3699, 3700, 3701, 3702, 3703, 3704, 3705, 3706, 3707, 3708, 3709, 3710, 3711, 3712, 3713, 3714, 3715, 3716, 3717, 3718, 3719, 3720, 3721, 3722, 3723, 3724, 3725, 3726, 3727, 3728, 3729, 3730, 3731, 3732, 3733, 3734, 3735, 3736, 3737, 3738, 3739, 3740, 3741, 3742, 3743, 3744, 3745, 3746, 3747, 3748, 3749, 3750, 3751, 3

UNCLASSIFIED UNDER EXECUTIVE ORDER 13526, DATE 09-08-2011  
DECLASSIFY ON: 25-04-2038  
AUTHORITY: 25-04-2038  
DATE: 09-08-2011  
BY: 60321 UCBAW/STW

[illegible]

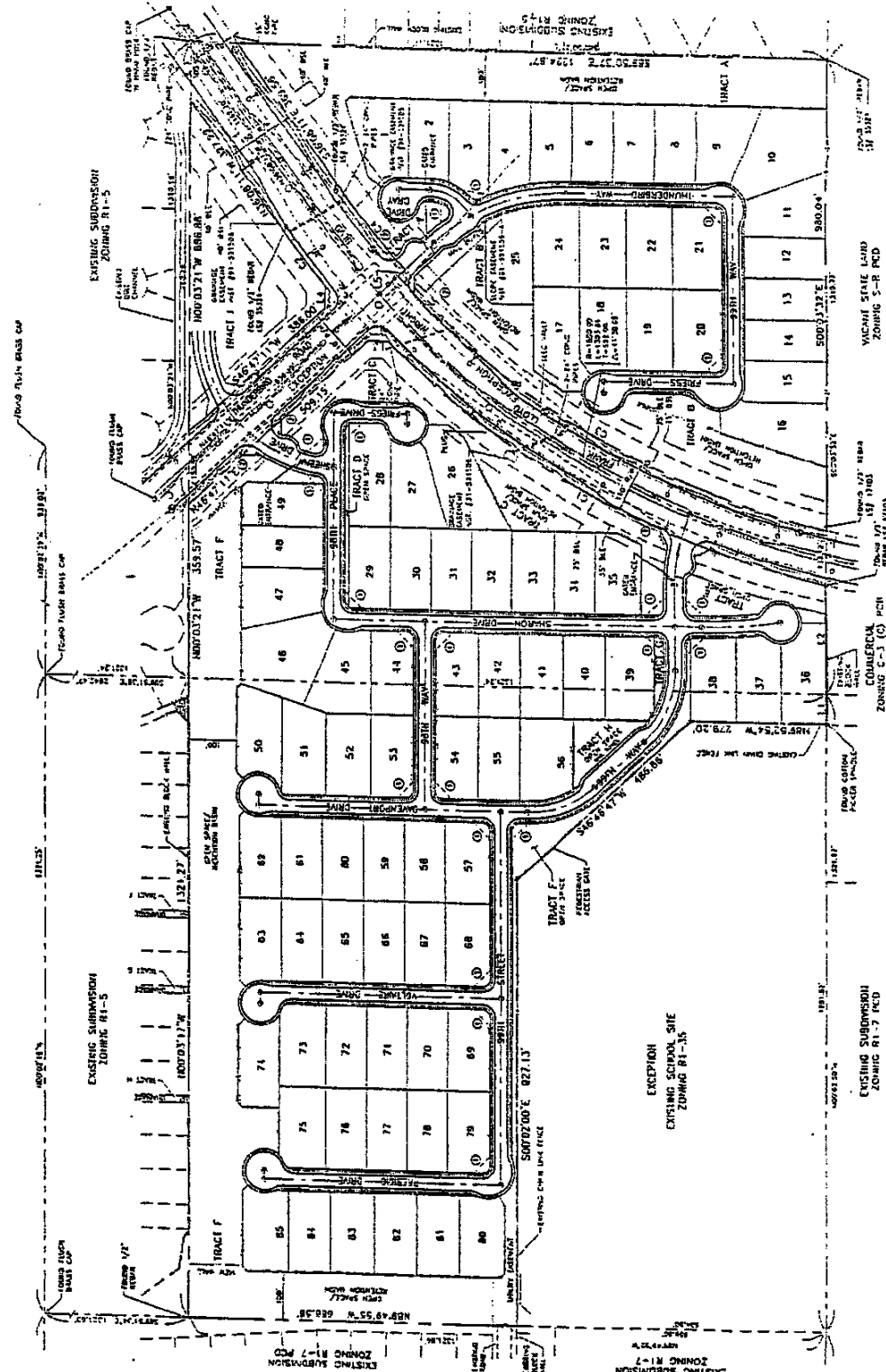
4411  
HAWCOCK 4111 BUILDERS, INC.

**FRANK LANGFORD & THOMPSON ROAD**  
**A GATED COMMUNITY**  
5049711 (604) 677-4141  
5575 WINDY WAY, SUITE 201  
SCOTTSVILLE, ONTARIO

# STREPTOLIN



CONST. COST			
SUBJECT	ANSWERS	QTLA	EDITION PAGE 27
51	1825.00	37 10 12	1041.43 231 38
52	1818.20	5 18 12	104.22 73 52
53	1753.00	3 20 12	1076.24 133 53
54	1325.00	7 05 15	311 34 163 83

[illegible]



**TO:** DEVELOPMENT REVIEW BOARD **DATE:** June 6, 2002  
**FROM:** CURRENT PLANNING SERVICES  
**SUBJECT:** CASE 5-PP-2002

**REQUEST:** Approve preliminary plat  
**PROJECT NAME:** Hancock Homes/Madrid  
**LOCATION:** SWC, SEC, NWC and NEC Frank Lloyd Wright & Thunderbird.

**DEVELOPER/OWNER:** Estate of Linda Moore  
**ENGINEER:** Stantec Consulting Inc.  
**APPLICANT/COORDINATOR:** Beus Gilbert, John Berry  
3200 N Central, Suite 12000  
Phoenix, Arizona 85012  
602-234-5811

**STAFF RECOMMENDATION:** APPROVE subject to the attached stipulations.

**PUBLIC COMMENTS:** During the rezoning process, the applicant worked closely with the surrounding neighborhoods and agreed to the development plan. There have been no other comments at the time this report was drafted.

**REQUEST:** This is a request for preliminary plat approval of a new 85-lot subdivision located on 57 acres.

**LOCATION & ZONING:** The site surrounds the intersection of Thunderbird Road and Frank Lloyd Wright Boulevard, and is zoned Single Family Residential (R1-10).

**CHARACTERISTICS:** The property has not been developed, contains native vegetation, and slopes gradually to the southwest. Single-family homes surround the site to the south, west, and north. A school, public park, small commercial area, and vacant land are located to the east of the site. Thunderbird Road and Frank Lloyd Wright Boulevard split the property. The south east portion of the site shares a property line with a day care center and a school/park site.

**HISTORY:** On May 13, 2002, the City Council rezoned the property from Single Family Residential (R1-35) to Single Family Residential (R1-10).

**DISCUSSION:** The applicant proposes 85 lots on the 57 acres, with lot sizes of approximately 14,000 square feet. The subdivision proposes 3 gated entrances from Frank Lloyd Wright Boulevard and Thunderbird Road, a new traffic signal at the Frank Lloyd Wright/Thunderbird intersection, and street improvements and landscaped setbacks along Frank Lloyd Wright Boulevard and Thunderbird Road. The applicant is also providing 100-foot wide landscaped buffers located between the existing homes and the new homes and a 2.5-acre open-space tract at the southwest corner of the Thunderbird Road and Frank Lloyd Wright Boulevard intersection.

## ATTACHMENT 4

APPROVED AT THE 6-6-02 DRB HEARING - PC

The site gradually slopes to the southwest, and the existing neighborhood to the west is approximately 5-feet lower in elevation than the west side of this property. There was initial concern that this development would block the existing neighborhoods' mountain views. To help minimize the impact, the applicant agreed to provide the 100-foot wide buffers and significantly cut the site so that the first row of new homes (westernmost row) would be the same elevation and the row of existing homes to the west. The applicant also agreed to construct only one-story homes (with basements).

A 6-foot concrete block theme wall colored purple-haze and gray will be provided along Frank Lloyd Wright Boulevard, Thunderbird Road, and abutting commercial property. A new wrought iron fence will replace the existing chain link fence for the east property line shared with the school/park site, which will have pedestrian access gates. The 100-foot-wide open-space tracts will be used for stormwater retention, pedestrian paths, and landscaped with desert materials. View fences will be provided along the open space tracts.

Near the southeast corner of the property, there is an existing street stubout from the neighborhood to the south via 99<sup>th</sup> Way. The adjacent neighborhood has opposed a street connection to this project. Therefore, this asphalt stub is proposed to be re-designed as a landscaped pedestrian connection and emergency access.

**RELATED CASES:** 1-GP-2002, 1-ZN-2002

---

Tim Curtis, 480-312-4210  
Project Coordination Manager  
480-312-4210

**ATTACHMENTS:**

- #1-Project Narrative
- #2-Aerial
- #3-Zoning Map
- #4-Context Photos
- #5-Site Plan
- #6-Landscaping Plan
- A-Stipulations
- B-Ordinance Requirements

**SCOTTSDALE DEVELOPMENT REVIEW BOARD  
KIVA - CITY HALL  
3939 N. DRINKWATER BOULEVARD  
JUNE 6, 2002  
MINUTES**

**PRESENT:** Tom Silverman, Councilman  
Tony Nelssen, Planning Commission Member  
Raymond Potter, Vice Chairman  
E.L. Cortez, Design Member  
Mark Soden, Design Member

**ABSENT:** J.T. Elbracht, Design Member  
Anne Gale, Design Member

**STAFF:** Tim Curtis  
Curtis Kozall  
Kurt Jones  
Jayna Shewak  
Bill Verschuren  
Kira Wauwie  
Jason Yaich

**CALL TO ORDER**

The regular meeting of the Scottsdale Development Review Board was called to order by Councilman Silverman at 1:00 p.m.

**ROLL CALL**

A formal roll call confirmed members present as stated above.

**MINUTES APPROVAL**

April 18, 2002  
May 9, 2002

**VICE CHAIRMAN POTTER MADE A MOTION TO APPROVE THE APRIL 18, 2002 AND MAY 9, 2002 MINUTES AS PRESENTED. SECOND BY MR. CORTEZ.**

**THE MOTION PASSED BY A VOTE OF FIVE (5) TO ZERO (0).**

**OPENING STATEMENT**

**COUNCILMAN SILVERMAN** read the opening statement that describes the role of the Development Review Board and the procedures used in conducting this meeting.

**APPROVED JULY 11, 2002**

**ATTACHMENT 5**

9. 90-DR-1999#2 Cactus Business Suites – office complex  
Site plan and elevations  
Northeast corner Cactus & Hayden  
Puget Properties, applicant

(PULLED TO REGULAR AGENDA)

10. 5-PP-2002 Hancock Homes  
Preliminary Plat  
Southwest corner, Southeast corner,  
Northwest corner and Northeast corner of  
Frank Lloyd Wright & Thunderbird.  
Beus Gilbert, PLLC, applicant

**MR. CORTEZ** inquired about the dimension of the interlock wall. **MR. CURTIS** stated six inches wide. **MR. CORTEZ** stated his preference would be to eliminate the interlock wall. He further stated he would like to discuss that with the design architect. He requested this item be pulled to the regular agenda. **MR. CURTIS** stated that Stipulation No. 9 under Wall Design states the dooley wall fencing shall not be allowed for perimeter walls that would not be an interlocking block it would be the six or eight inch CMU block.

(PULLED TO REGULAR AGENDA)

11. 60-DR-200132 Northsight Villages Phase III – retail shop  
Site plan and elevations  
15040 N. Northsight Blvd  
K & I Architects, Architect/Designer

**MR. CORTEZ** inquired if the glass elements in the towers would be clear. **MR. CURTIS** stated it has been stipulated that the tower elements would be translucent. **MR. CORTEZ** inquired if there are any lighting elements on the interior side that will allow light to penetrate the translucent wall. **MR. CORTEZ** stated there would be interior lighting that would also penetrate through the translucent glass in the evenings.

(PULLED TO REGULAR AGENDA)

12. 69-DR-2000#2 Fire Station 17 – fire station with living quarters  
Site Plan and elevations  
16701 N. 100<sup>th</sup> Street  
Hunt & Caraway Architects Ltd.  
Architect/Designer

**APPROVED JULY 11, 2002**

**MR. NELSEN** stated he was not comfortable with approving the site plan. He felt the building could be tweaked a little bit. The other issue is the trash pickup because they would have to amend the site plan if there is a creative solution and it is moved somewhere. There are a number of issues regarding the trash pickup. He further stated he does not have any real problems with the buildings themselves. The site plan needs some adjustments particularly in lieu of the improvements on Hayden Road.

**MR. CORTEZ** inquired if the applicant has discussed with the church the possibility of locating the trash containment units on the other side of the driveway. **MR. SIMPSON** stated they would be willing to discuss that with the church.

**MR. CORTEZ** stated he believed there have been sufficient issues raised by the Board that this case should be continued.

**MR. CORTEZ MOVED TO CONTINUE CASE 90-DR-1999#2 FOR 30 DAYS FROM TODAY WITH THE SPECIFIC CONCERNS RAISED BY THE BOARD TODAY REGARDING LANDSCAPING ON THE HAYDEN CACTUS FRONTAGES. SPECIFICALLY WITH REGARD TO TRASH CONTAINMENT UNITS ON THE NORTH PROPERTY LINE. THE REVISED STIPULATIONS SUBMITTED BY STAFF. LOOK AT THE OVERALL HEIGHT OF THE BUILDING FROM CACTUS ROAD. SECONDED BY MR. SODEN.**

**THE MOTION PASSED BY A VOTE OF FOUR (4) TO ONE (1) WITH VICE CHAIRMAN POTTER DISSENTING.**

10. 5-PP-2002

Hancock Homes  
Preliminary Plat  
Southwest corner, Southeast corner,  
Northwest corner and Northeast corner of  
Frank Lloyd Wright & Thunderbird.  
Beus Gilbert, PLLC, applicant

**MR. CURTIS** stated Mr. Cortez raised a couple of questions in the study session in terms of the wall design.

**MR. CORTEZ** stated he wanted to discuss the entry detail. There was enough detail included on the elevations that indicated the entry gate design. He requested confirmation from the applicant that was the intended design for the entryway.

**JACK REESE**, SanteC Consulting, 8311 S. 48<sup>th</sup> Street, Phoenix, AZ, confirmed that it was the entry gate design. **MR. CORTEZ** inquired about the interlock wall. **MR. REESE** stated it is not an interlock wall but rather a CMU block wall.

**APPROVED JULY 11, 2002**

**MR. CORTEZ** stated for clarification that the school fence currently does not exist. The wall that does exist is chain link. The new design would be wrought iron. **MR. REESE** replied in the affirmative and there would be landscaping between their property and the school.

**MR. CORTEZ MOVED TO APPROVE CASE 5-PP-2002 WITH THE CLARIFICATION THAT THE INTERLOCK WALL IS ACTUALLY AN INTEGRAL COLORED MASONRY STANDARD UNIT WALL. THE ENTRY GATE DETAIL SHOW IN THE BOARD PACKET WILL BE THE ACTUAL DESIGN AS INDICATED. SECONDED BY MR. NELSEN.**

**THE MOTION PASSED BY A VOTE OF FIVE (5) TO ZERO (0).**

11. 60-DR-200132                      Northsight Villages Phase III – retail shop  
   Site plan and elevations  
   15040 N. Northsight Blvd  
   K & I Architects, Architect/Designer

**MR. CURTIS** presented this case as per the project coordination packet. He stated during study session there were questions raised about the tower element. Staff is recommending approval subject to the attached stipulations.

**KRISTJAN SIGURDSSON**, K&I Architects, 1850 N. Central #335, Phoenix, AZ, stated he believed the question had to do with the translucent glass tower element. The staff stipulation is that they would be translucent glass. The glass treatment is on the exterior canopy so it would not be visible from underneath the canopy. Their intent was to lightly illuminate with a small light fixture. It would be a glass material with a dull frosted film on the backside.

**MR. SODEN** stated he is concerned about the confusing assortment of tower elements. He further stated he is also concerned about the landscape along the west pedestrian walkway. The trees are small relative to the scale of the building. **MR. SIGURDSSON** stated the reason for the different tower elements are to provide the tenants more identity. The only variation is the roof element. He added they were attempting to have a little bit of fun with the tower designs. He provided information on the adjacent shopping center. **MR. SODEN** stated it would appear that there is no real purpose for the towers other than large beacons to draw your attention. He inquired about the height of the towers. **MR. SIGURDSSON** stated the towers are 30 feet. **MR. SODEN** remarked that he was struggling with trying to justify these bizarre shapes in the landscaping and architecture. **MR. SIGURDSSON** stated this would be a little bit different than the average shopping center. He discussed the differences between the towers.

**VICE CHAIRMAN POTTER** inquired if the tower elements of the first phase were the hip the gable and barrel roof. **MR. SIGURDSSON** stated no that comes from the Scottsdale Gun club. The intent was to tie the whole project together with the piece

**APPROVED JULY 11, 2002**



# CITY COUNCIL REPORT



MEETING DATE: January 7, 2003

ITEM NO.

6

GOAL: Coordinate Planning to Balance Infrastructure

## SUBJECT

**Sevano Village Parcel 3 Subdivision Final Plat**

## REQUEST

To develop a sixty four (64) lot single family subdivision on a parcel of approximately 39 acres.  
6-PP-2002

### Related Cases:

10-ZN-2001, 6-PP-2002

## OWNER

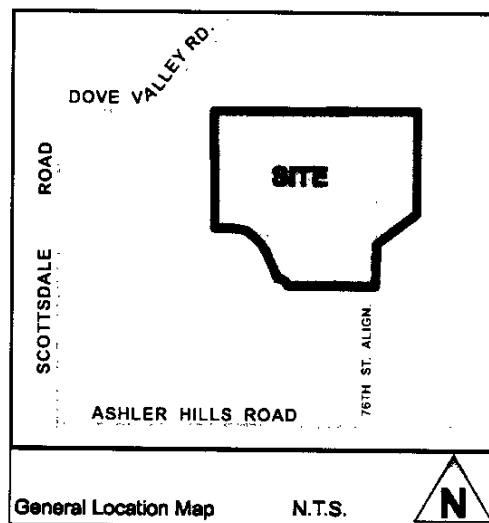
Grayhawk Development, Inc

## APPLICANT CONTACT

Gilbertson Associates, Inc  
Dave Gilbertson  
480-607-2244

## LOCATION

East of the southeast corner of Dove Valley Road and Scottsdale Road (Northeast of the Scottsdale Summit Retail Center).



## BACKGROUND

### Zoning.

The site is zoned R1-5 ESL which allows for single-family homes.

### Context.

This subdivision is located east of the Summit Retail Center and South of the Winfield residential community.

## APPLICANT'S PROPOSAL

### Goal/Purpose of Request.

The purpose of the City Council final plat approval is to authorize the recordation of the final plat with the Maricopa County records office. The City Council approval process is the last step to confirm the plats consistency with the preliminary plat approval prior to recordation with the county.

### Applicant's Request.

The request is to approve a subdivision plat with 64 single-family lots. This is a reduction from the original approval of 90 lots given earlier this year.

**Development Information.**

- Construction of 64 single-family homes
- Construction of private roadway improvements
- Construction of waterlines and sewer lines
- Located within the Cave Creek Unified School District
- Provision of 10.15 acres of Natural Area Open Space

**IMPACT ANALYSIS****Traffic.**

This subdivision is part of the Whisper Rock master planned residential and golf course development. The overall development road network was approved as part of a general plan amendment and zoning case in 2001. This residential element of the project will have access to Scottsdale Road from Ashler Hills Drive. Projected traffic volumes for the development of this portion of the master planned community show that the intersection of Scottsdale Road and Ashler Hills Drive will operate at a satisfactory level of service with year 2020 volumes. The required traffic signal and intersection improvements at the intersection have since been completed.

**School.**

The subdivision falls within the Cave Creek Unified School District. The applicant notified the District of this project when it went through a rezoning process in the fall of 2001 and in early 2002. Additional follow up was provided when the preliminary plat was filed. Staff has updated the district to notify them that the lot count has been reduced. At the writing of this report, no comments have been received from the District staff.

**Parking.**

- Parking will be provided per typical single-family residential.
- There is no common area parking for this subdivision

**Drainage.**

- Stormwater storage basins will be constructed to manage the storm drainage.

**Trails.**

- An 8 foot wide public path will be constructed along the eastern edge of the newly acquired city park parcel located south of this project.

**Water/Sewer.**

- Waterlines and sewer lines will be constructed by the developer and dedicated to the City for maintenance.

**Police/Fire.**

- This plat has been review by Rural/Metro Fire Department and it conforms to the minimum requirements for fire apparatus access.

**Community Involvement.**

- There was significant involvement by the surrounding community during the rezoning and general plan amendment processes.

- In January of 2002, the applicant met with the residents of the adjacent Winfield community. The attendance record of the meeting shows that 19 residents came to that meeting.
- The applicant is providing on-going information to area residents as requested.

**Other Boards and Commissions.**

The Development Review Board approved the preliminary plat on April 18, 2002.

**STAFF  
RECOMMENDATION**

**Recommended Approach:**

Staff recommends that the final plat be approved as presented.

**Proposed Next Steps:**

Approval will enable the final plat to be recorded, establishing lots, streets, easements and common tracts.

**RESPONSIBLE DEPT(S)**

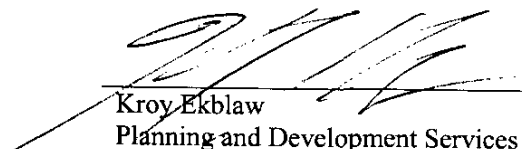
**Planning and Development Services Department**  
Current Planning Services

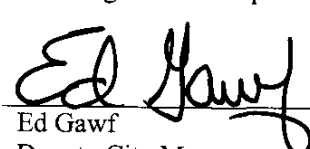
**STAFF CONTACT(S)**

Jayna Shewak  
Project Coordination Manager  
480-312-7059  
E-mail: [jshewak@www.ScottsdaleAZ.gov](mailto:jshewak@www.ScottsdaleAZ.gov)

Jeff Fisher  
Interim Plan Review and Permit Services Director  
480-312-7619  
E-mail: [jefisher@ci.scottsdale.az.us](mailto:jefisher@ci.scottsdale.az.us)

**APPROVED BY**

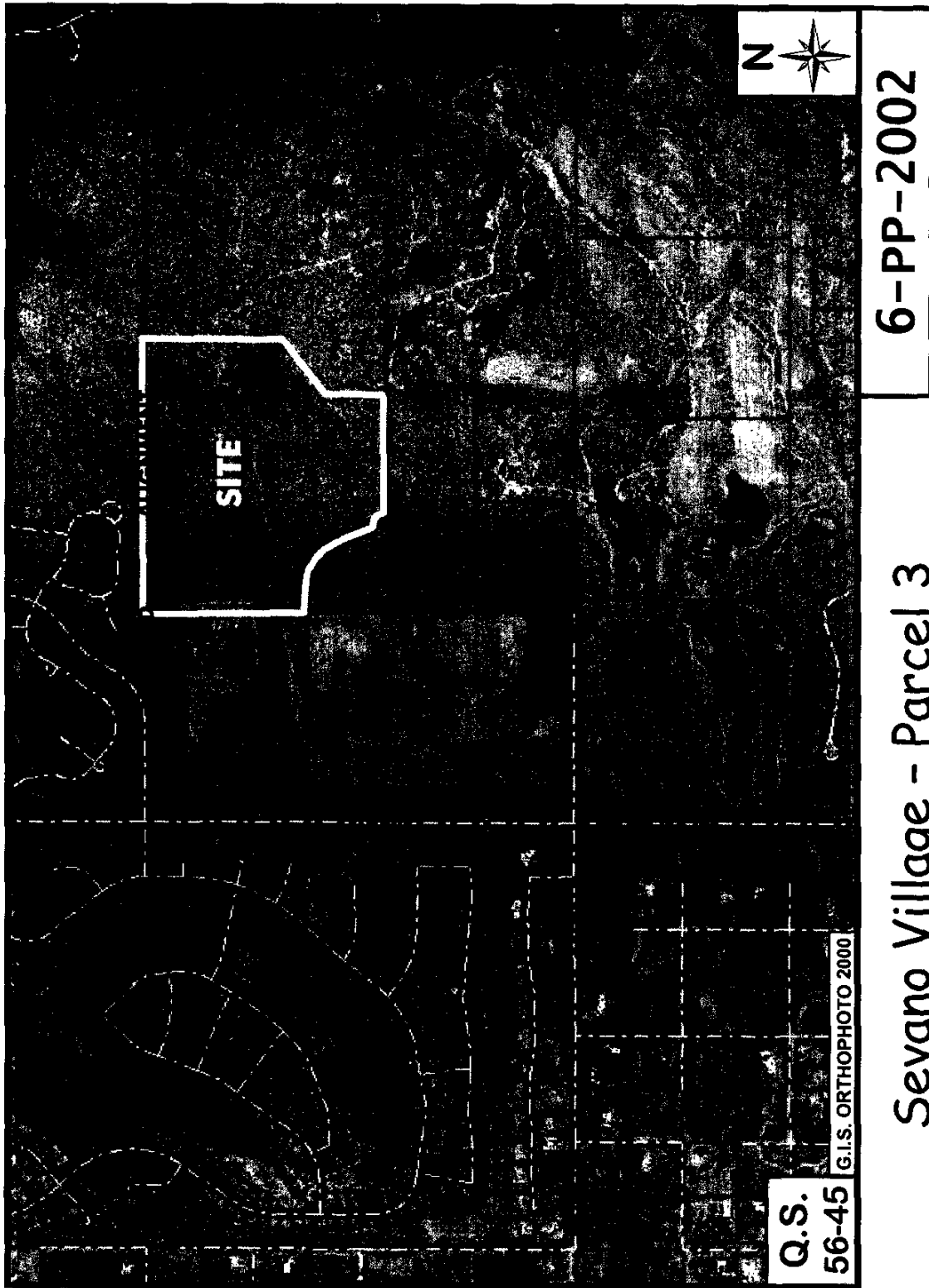
  
Kroy Ekblaw  
Planning and Development Services General Manager  
Date 12/13/02

  
Ed Gawf  
Deputy City Manager  
Date 12/13/02

**ATTACHMENTS**

1. Aerial Map
2. Final Plat
3. Preliminary Plat
4. Development Review Board Staff Report
5. Development Review Board Minutes





# ATTACHMENT 1



# FINAL PLAT SEVANO VILLAGE, PARCEL 3 THAT PORTION OF SECTION 14, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA & SALT RIVER BASIN 4, MARICOPA COUNTY, ARIZONA

## GENERAL NOTES

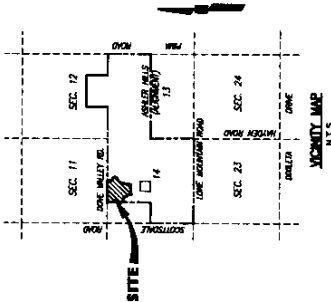
1. THE SUBDIVISION IS LOCATED WITHIN THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA. THE SUBDIVISION IS BEING SUBMITTED AS A FINAL PLAT.

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5. THE SUBDIVISION IS BEING SUBMITTED AS A FINAL PLAT. THE SUBDIVISION IS BEING SUBMITTED AS A FINAL PLAT.



## BASE OF BEARING

THE BASE OF BEARING FOR THE SUBDIVISION IS THE MERIDIAN OF THE GILA & SALT RIVER BASIN 4, MARICOPA COUNTY, ARIZONA. THE BASE OF BEARING IS THE MERIDIAN OF THE GILA & SALT RIVER BASIN 4, MARICOPA COUNTY, ARIZONA.

## RIGHT TRIANGLE EASEMENT

THE RIGHT TRIANGLE EASEMENT IS BEING SUBMITTED AS A FINAL PLAT. THE RIGHT TRIANGLE EASEMENT IS BEING SUBMITTED AS A FINAL PLAT.

## CERTIFICATION

THIS IS TO CERTIFY THAT THE SURVEY AND SUBDIVISION OF THE PARCELS DESCRIBED HEREIN WAS MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND IN ACCORDANCE WITH THE REQUIREMENTS OF THE ARIZONA PLAT ACT, AND THAT THE SURVEY IS TRUE AND CORRECT.

WITNESSED AND SUBSCRIBED AT PHOENIX, ARIZONA, THIS 10th DAY OF SEPTEMBER, 2002.



STATE OF ARIZONA  
COUNTY OF MARICOPA

## FINAL PLAT

SEVANO VILLAGE, PARCEL 3

Submitted by: [Name]  
Date: [Date]  
Scale: [Scale]  
Sheet: 1 of 1

## GENERAL NOTES

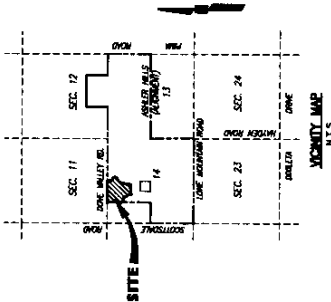
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WITNESSED AND SUBSCRIBED AT PHOENIX, ARIZONA, THIS 10th DAY OF SEPTEMBER, 2002.

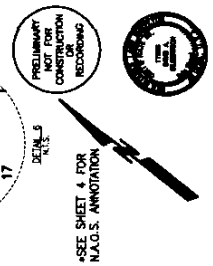
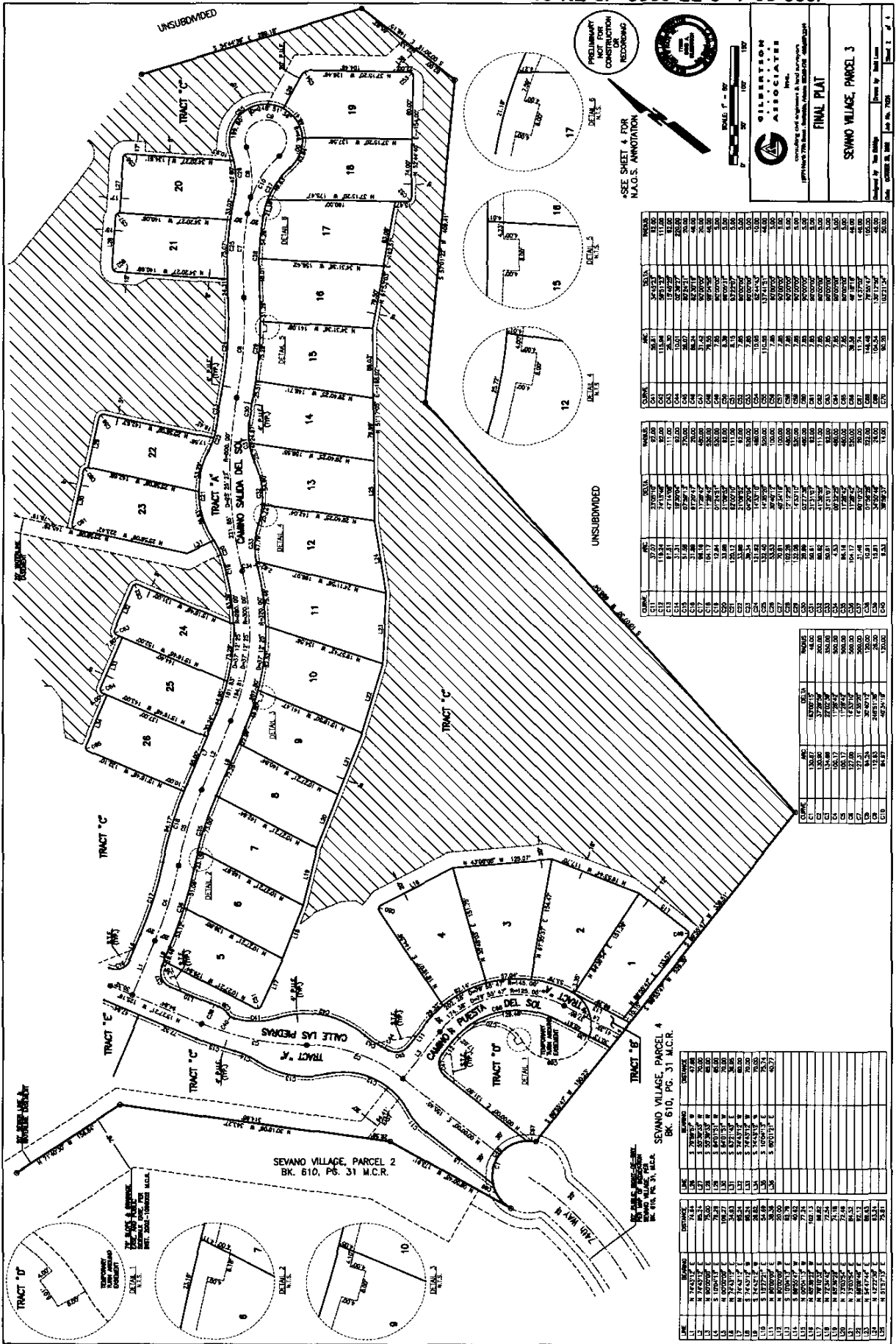


STATE OF ARIZONA  
COUNTY OF MARICOPA

## FINAL PLAT

SEVANO VILLAGE, PARCEL 3

Submitted by: [Name]  
Date: [Date]  
Scale: [Scale]  
Sheet: 1 of 1



**GILBERTSON ASSOCIATES**  
CONSULTING AND ENGINEERING  
1000 North 10th Street, Suite 100, San Jose, CA 95131  
Tel: (408) 281-1000  
Fax: (408) 281-1001  
Email: gilbertson@earthlink.net

**FINAL PLAT**

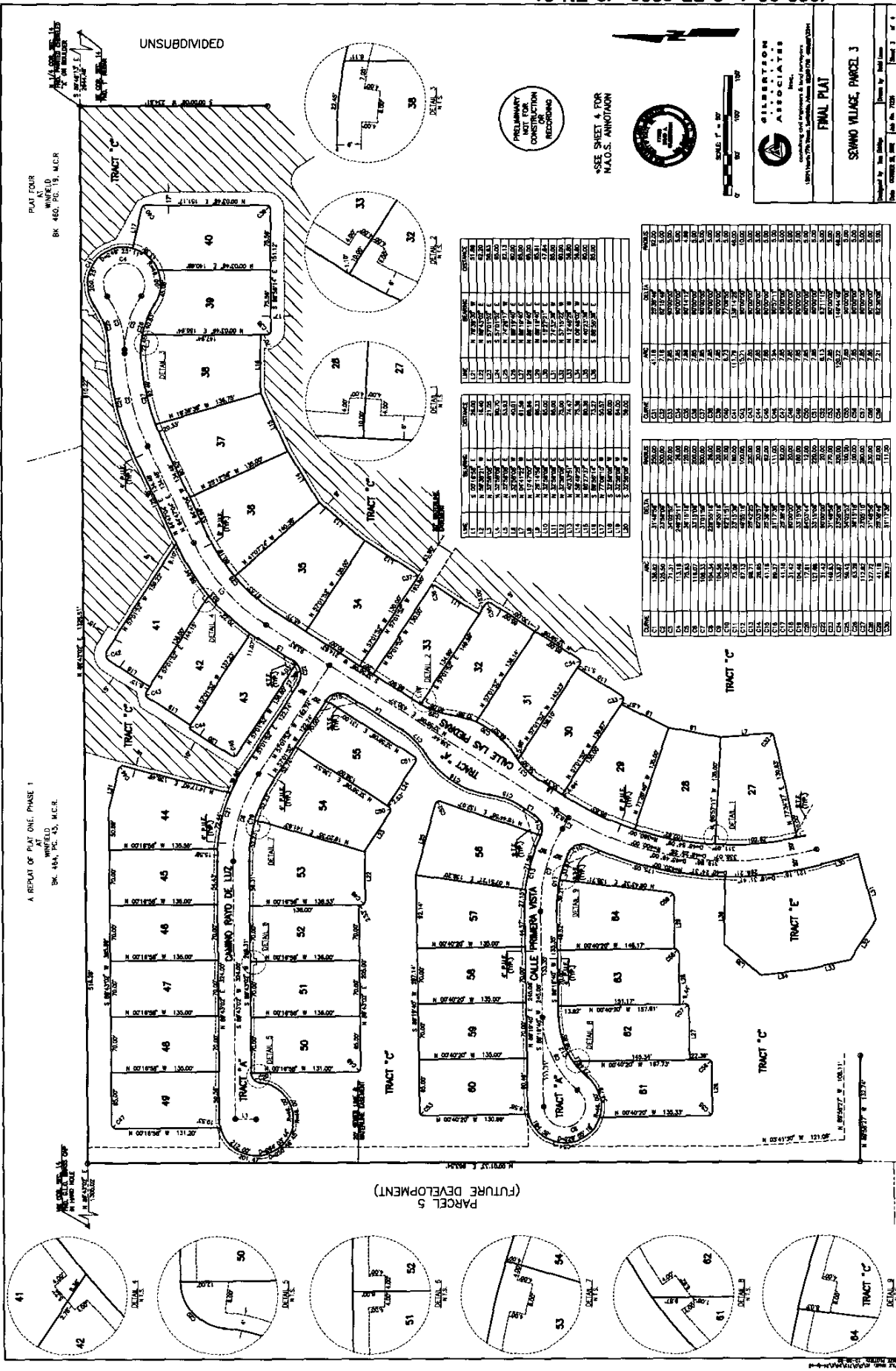
**SEAVIEW VILLAGE, PARCEL 3**

Prepared by: [Signature]  
Date: 06/08/02  
Scale: 1" = 50'

Lot	Area (sq. ft.)	Area (sq. m.)	Volume (cu. ft.)	Volume (cu. m.)
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2	1,111.00	102.14	1,111.00	31.14
3	1,111.00	102.14	1,111.00	31.14
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6	1,111.00	102.14	1,111.00	31.14
7	1,111.00	102.14	1,111.00	31.14
8	1,111.00	102.14	1,111.00	31.14
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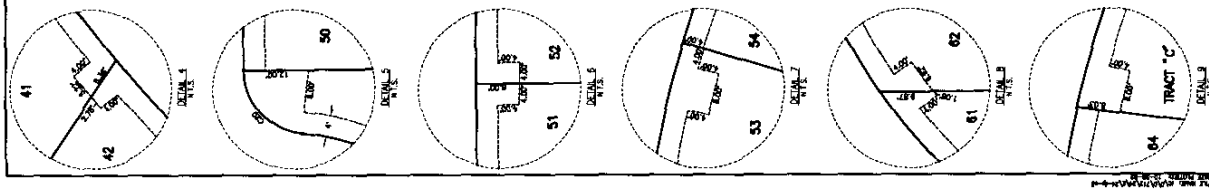
Lot	Area (sq. ft.)	Area (sq. m.)	Volume (cu. ft.)	Volume (cu. m.)
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25	1,111.00	102.14	1,111.00	31.14
26	1,111.00	102.14	1,111.00	31.14



A REPEAT OF PLAT ONE, PHASE 1  
 WHITEFIELD  
 BK. 484, PG. 43, M.C.R.

PLAT FOUR  
 WHITEFIELD  
 BK. 480, PG. 19, M.C.R.

PARCEL 5  
 (FUTURE DEVELOPMENT)



LOT	AREA	PERMITS	REMARKS
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4	11.40	11.40	11.40
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46	11.40	11.40	11.40
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48	11.40	11.40	11.40
49	11.40	11.40	11.40

LOT	AREA	PERMITS	REMARKS
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51	11.40	11.40	11.40
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54	11.40	11.40	11.40
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58	11.40	11.40	11.40
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68	11.40	11.40	11.40
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70	11.40	11.40	11.40
71	11.40	11.40	11.40
72	11.40	11.40	11.40
73	11.40	11.40	11.40
74	11.40	11.40	11.40
75	11.40	11.40	11.40
76	11.40	11.40	11.40
77	11.40	11.40	11.40
78	11.40	11.40	11.40
79	11.40	11.40	11.40
80	11.40	11.40	11.40
81	11.40	11.40	11.40
82	11.40	11.40	11.40
83	11.40	11.40	11.40
84	11.40	11.40	11.40
85	11.40	11.40	11.40
86	11.40	11.40	11.40
87	11.40	11.40	11.40
88	11.40	11.40	11.40
89	11.40	11.40	11.40
90	11.40	11.40	11.40
91	11.40	11.40	11.40
92	11.40	11.40	11.40
93	11.40	11.40	11.40
94	11.40	11.40	11.40
95	11.40	11.40	11.40
96	11.40	11.40	11.40
97	11.40	11.40	11.40
98	11.40	11.40	11.40
99	11.40	11.40	11.40
100	11.40	11.40	11.40

PRELIMINARY  
 CONSTRUCTION  
 OR  
 RECORDING

USE SHEET 4 FOR  
 N.A.S. ANNOTATION

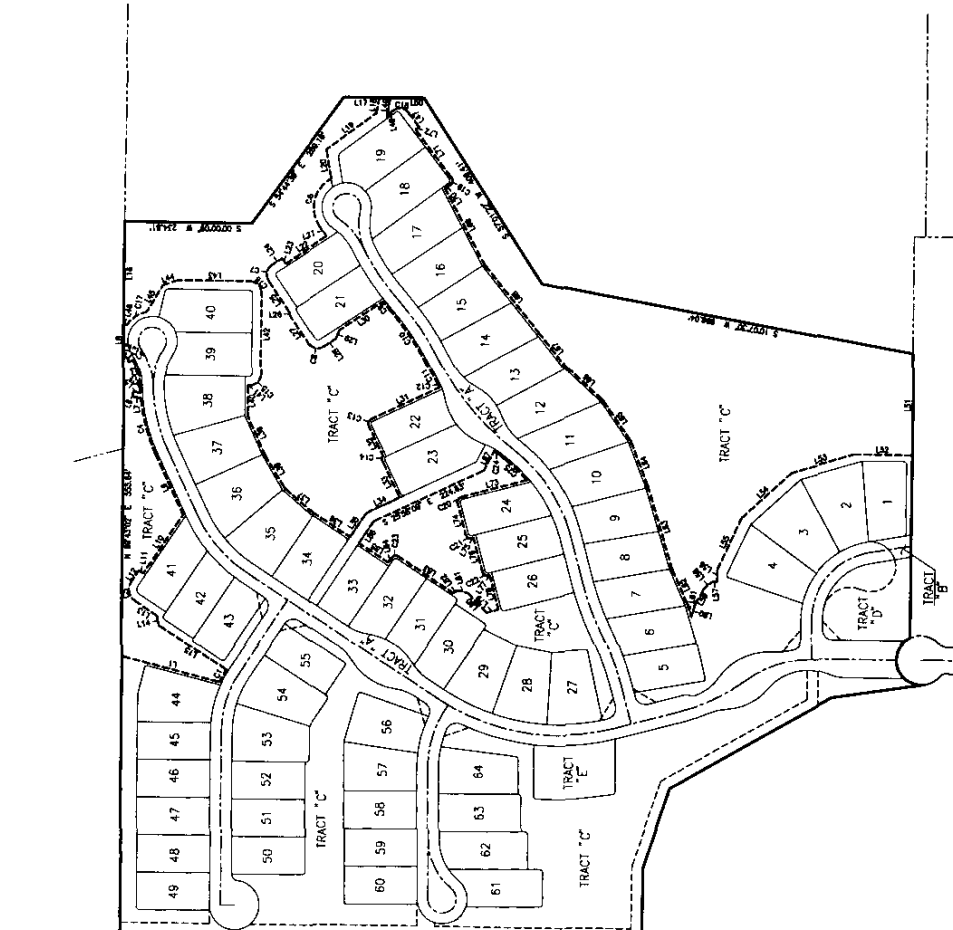
**GILBERTSON ASSOCIATES**  
 INC.  
 10014 130TH AVE. S.W. SUITE 200  
 BELLEVUE, WA 98007-3204  
 (206) 461-1000

**FINAL PLAT**

**SEWING WILAGE, PARCEL 3**

Prepared by: [Signature]  
 Date: [Date]

LINE	BEARING	DISTANCE
1	S 14° 17' 40" E	184.48
2	S 14° 17' 40" E	184.48
3	S 14° 17' 40" E	184.48
4	S 14° 17' 40" E	184.48
5	S 14° 17' 40" E	184.48
6	S 14° 17' 40" E	184.48
7	S 14° 17' 40" E	184.48
8	S 14° 17' 40" E	184.48
9	S 14° 17' 40" E	184.48
10	S 14° 17' 40" E	184.48
11	S 14° 17' 40" E	184.48
12	S 14° 17' 40" E	184.48
13	S 14° 17' 40" E	184.48
14	S 14° 17' 40" E	184.48
15	S 14° 17' 40" E	184.48
16	S 14° 17' 40" E	184.48
17	S 14° 17' 40" E	184.48
18	S 14° 17' 40" E	184.48
19	S 14° 17' 40" E	184.48
20	S 14° 17' 40" E	184.48
21	S 14° 17' 40" E	184.48
22	S 14° 17' 40" E	184.48
23	S 14° 17' 40" E	184.48
24	S 14° 17' 40" E	184.48
25	S 14° 17' 40" E	184.48
26	S 14° 17' 40" E	184.48
27	S 14° 17' 40" E	184.48
28	S 14° 17' 40" E	184.48
29	S 14° 17' 40" E	184.48
30	S 14° 17' 40" E	184.48
31	S 14° 17' 40" E	184.48
32	S 14° 17' 40" E	184.48
33	S 14° 17' 40" E	184.48
34	S 14° 17' 40" E	184.48
35	S 14° 17' 40" E	184.48
36	S 14° 17' 40" E	184.48
37	S 14° 17' 40" E	184.48
38	S 14° 17' 40" E	184.48
39	S 14° 17' 40" E	184.48
40	S 14° 17' 40" E	184.48
41	S 14° 17' 40" E	184.48
42	S 14° 17' 40" E	184.48
43	S 14° 17' 40" E	184.48
44	S 14° 17' 40" E	184.48
45	S 14° 17' 40" E	184.48
46	S 14° 17' 40" E	184.48
47	S 14° 17' 40" E	184.48
48	S 14° 17' 40" E	184.48
49	S 14° 17' 40" E	184.48
50	S 14° 17' 40" E	184.48
51	S 14° 17' 40" E	184.48
52	S 14° 17' 40" E	184.48
53	S 14° 17' 40" E	184.48
54	S 14° 17' 40" E	184.48
55	S 14° 17' 40" E	184.48
56	S 14° 17' 40" E	184.48
57	S 14° 17' 40" E	184.48
58	S 14° 17' 40" E	184.48
59	S 14° 17' 40" E	184.48
60	S 14° 17' 40" E	184.48
61	S 14° 17' 40" E	184.48
62	S 14° 17' 40" E	184.48
63	S 14° 17' 40" E	184.48
64	S 14° 17' 40" E	184.48
65	S 14° 17' 40" E	184.48
66	S 14° 17' 40" E	184.48
67	S 14° 17' 40" E	184.48
68	S 14° 17' 40" E	184.48
69	S 14° 17' 40" E	184.48
70	S 14° 17' 40" E	184.48
71	S 14° 17' 40" E	184.48
72	S 14° 17' 40" E	184.48
73	S 14° 17' 40" E	184.48
74	S 14° 17' 40" E	184.48
75	S 14° 17' 40" E	184.48
76	S 14° 17' 40" E	184.48
77	S 14° 17' 40" E	184.48
78	S 14° 17' 40" E	184.48
79	S 14° 17' 40" E	184.48
80	S 14° 17' 40" E	184.48
81	S 14° 17' 40" E	184.48
82	S 14° 17' 40" E	184.48
83	S 14° 17' 40" E	184.48
84	S 14° 17' 40" E	184.48
85	S 14° 17' 40" E	184.48
86	S 14° 17' 40" E	184.48
87	S 14° 17' 40" E	184.48
88	S 14° 17' 40" E	184.48
89	S 14° 17' 40" E	184.48
90	S 14° 17' 40" E	184.48
91	S 14° 17' 40" E	184.48
92	S 14° 17' 40" E	184.48
93	S 14° 17' 40" E	184.48
94	S 14° 17' 40" E	184.48
95	S 14° 17' 40" E	184.48
96	S 14° 17' 40" E	184.48
97	S 14° 17' 40" E	184.48
98	S 14° 17' 40" E	184.48
99	S 14° 17' 40" E	184.48
100	S 14° 17' 40" E	184.48



**GILBERTSON ASSOCIATES**  
INC.  
CONSULTING AND ENGINEERING  
18754 17th Street, San Diego, CA 92128 (619) 594-1234

**FINAL PLAT**

**SEVANO WILAGE, PARCEL 3**

Designed by: [Signature] Date: 10/10/02  
Check: [Signature] Date: 10/10/02

PRELIMINARY  
NOT FOR  
CONSTRUCTION  
OR  
RECORDING



SCALE: 1" = 100'  
100' 200'

# PRELIMINARY PLAT FOR

## PARCEL 3

### SEVANO VILLAGE

LOCATED IN THE NORTH HALF OF SECTION 14,  
T.8N, R.4E, OF THE GABRIEL, MARICOPA COUNTY, ARIZONA

#### GENERAL NOTES

1. ALL STREETS TO BE PRIVATE AND MAINTAINED BY A HOMEOWNERS ASSOCIATION.
2. TRACTS TO BE USED AS FOLLOWS:  
A - PRIVATE STREETS AND EMERGENCY ACCESS.  
B - OPEN SPACE AND DRAINAGE EASEMENT.

#### BENCHMARK

C.I.S. BENCHMARK #122  
BRASS CAP IN 1/4" DIA. HOLE  
IN CONCRETE CURB AND SCOTTSDALE ROAD  
NAD 83 TBM # 211833

#### UTILITY COMPANIES

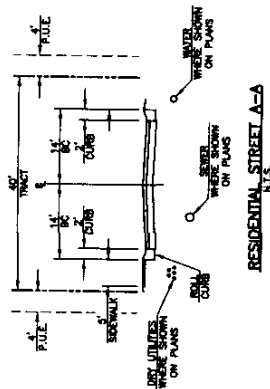
WATER CITY OF SCOTTSDALE  
SEWER CITY OF SCOTTSDALE  
ELECTRICITY SCOTTSDALE POWER SERVICE  
TELEPHONE GRIFF COMMUNICATIONS  
GAS BLACK MOUNTAIN GAS  
CABLE TV. COX COMMUNICATIONS

#### ZONING INFORMATION

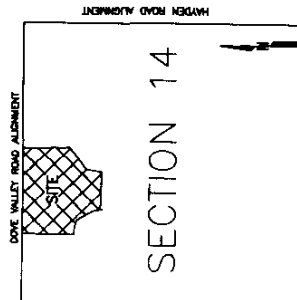
PRESENT ZONING R1-10 & R1-15 AMENDED  
PLAT AREA 39 ACRES  
MINIMUM LOT AREA 8,000 SF  
MINIMUM LOT AREA 4,700 SF

#### PREPARED FOR

CONTRACT DEVELOPMENT  
7377 EAST DOUGLASS RANCH ROAD, SUITE 100  
SCOTTSDALE, ARIZONA 85258-2038  
TELEPHONE NO. 480 986-2851



RESIDENTIAL STREET A-A  
N.T.S.



# ATTACHMENT 3



GILBERTSON  
ASSOCIATES  
INC.

Surveying and Engineering in the Southwest  
1000 North 10th Street, Suite 100, Phoenix, Arizona 85004  
Phone: (602) 254-1100 Fax: (602) 254-1101

PRELIMINARY PLAT

PARCEL 3  
SEVANO VILLAGE  
(PAID HOME SITE)

Prepared by: J.S. Date: 08/08/03  
Checked by: J.S. Date: 08/08/03  
Scale: 1" = 100' Sheet 1 of 2

502-PA-01





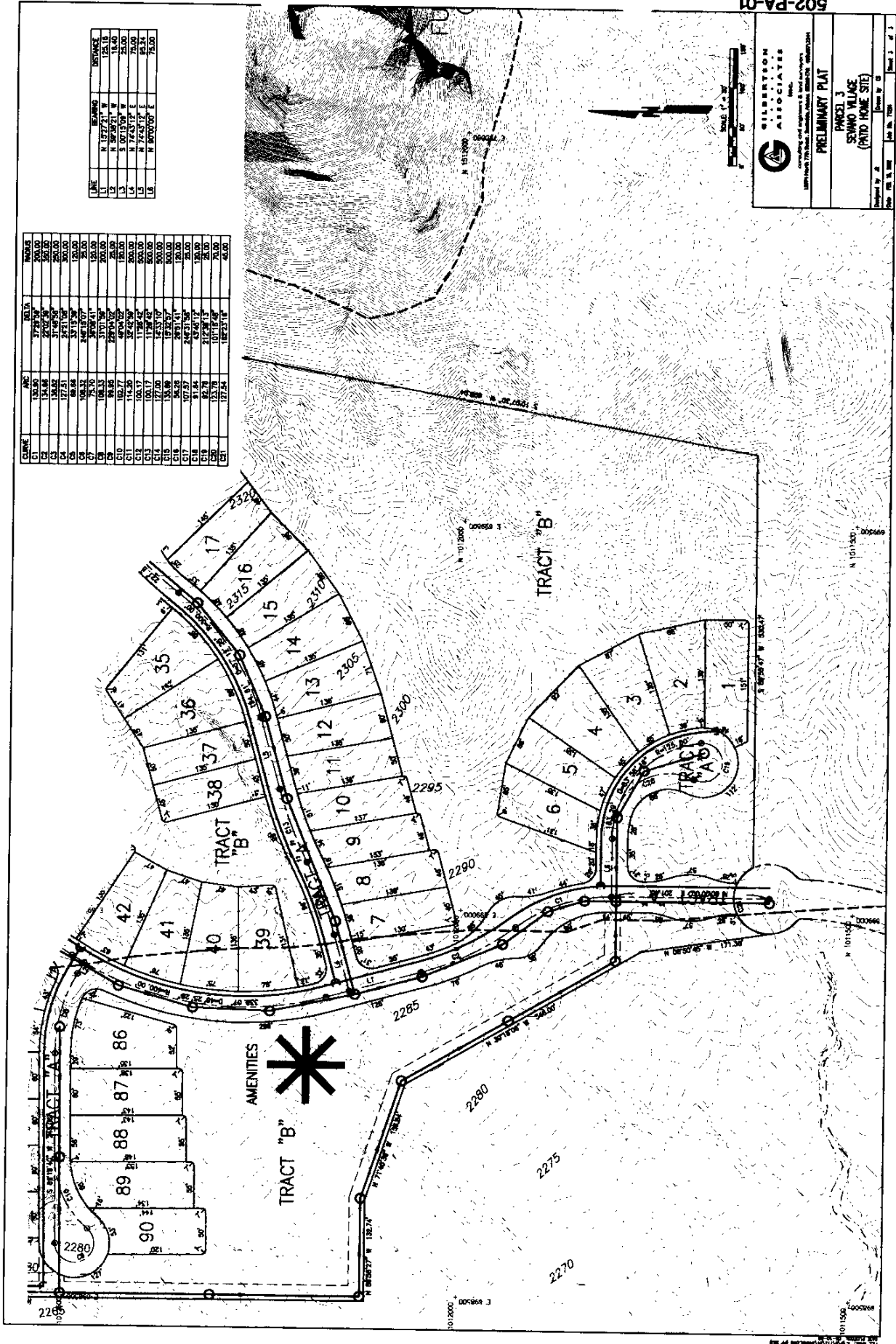
**PRELIMINARY PLAT**

PARCEL 3  
SAND VILLAGE  
(PUD HOME SITE)

Prepared by: G. H. King Date: 05/11/00 Scale: 1" = 100' Sheet 1 of 1

LINE	BEARING	DISTANCE
11	N 127°21' W	124.15
12	N 89°59'21" W	18.40
13	N 97°13'09" W	25.00
14	N 74°43'12" E	24.92
15	N 80°00'00" E	75.00

CURVE	ARC	CHORD	AREA
C1	124.15	124.15	15,749.79
C2	18.40	18.40	270.72
C3	25.00	25.00	371.46
C4	24.92	24.92	369.11
C5	75.00	75.00	5,497.87
C6	124.15	124.15	15,749.79
C7	18.40	18.40	270.72
C8	25.00	25.00	371.46
C9	24.92	24.92	369.11
C10	75.00	75.00	5,497.87
C11	124.15	124.15	15,749.79
C12	18.40	18.40	270.72
C13	25.00	25.00	371.46
C14	24.92	24.92	369.11
C15	75.00	75.00	5,497.87
C16	124.15	124.15	15,749.79
C17	18.40	18.40	270.72
C18	25.00	25.00	371.46
C19	24.92	24.92	369.11
C20	75.00	75.00	5,497.87
C21	124.15	124.15	15,749.79
C22	18.40	18.40	270.72
C23	25.00	25.00	371.46
C24	24.92	24.92	369.11
C25	75.00	75.00	5,497.87
C26	124.15	124.15	15,749.79
C27	18.40	18.40	270.72
C28	25.00	25.00	371.46
C29	24.92	24.92	369.11
C30	75.00	75.00	5,497.87
C31	124.15	124.15	15,749.79
C32	18.40	18.40	270.72
C33	25.00	25.00	371.46
C34	24.92	24.92	369.11
C35	75.00	75.00	5,497.87
C36	124.15	124.15	15,749.79
C37	18.40	18.40	270.72
C38	25.00	25.00	371.46
C39	24.92	24.92	369.11
C40	75.00	75.00	5,497.87
C41	124.15	124.15	15,749.79
C42	18.40	18.40	270.72
C43	25.00	25.00	371.46
C44	24.92	24.92	369.11
C45	75.00	75.00	5,497.87
C46	124.15	124.15	15,749.79
C47	18.40	18.40	270.72
C48	25.00	25.00	371.46
C49	24.92	24.92	369.11
C50	75.00	75.00	5,497.87
C51	124.15	124.15	15,749.79
C52	18.40	18.40	270.72
C53	25.00	25.00	371.46
C54	24.92	24.92	369.11
C55	75.00	75.00	5,497.87
C56	124.15	124.15	15,749.79
C57	18.40	18.40	270.72
C58	25.00	25.00	371.46
C59	24.92	24.92	369.11
C60	75.00	75.00	5,497.87
C61	124.15	124.15	15,749.79
C62	18.40	18.40	270.72
C63	25.00	25.00	371.46
C64	24.92	24.92	369.11
C65	75.00	75.00	5,497.87
C66	124.15	124.15	15,749.79
C67	18.40	18.40	270.72
C68	25.00	25.00	371.46
C69	24.92	24.92	369.11
C70	75.00	75.00	5,497.87
C71	124.15	124.15	15,749.79
C72	18.40	18.40	270.72
C73	25.00	25.00	371.46
C74	24.92	24.92	369.11
C75	75.00	75.00	5,497.87
C76	124.15	124.15	15,749.79
C77	18.40	18.40	270.72
C78	25.00	25.00	371.46
C79	24.92	24.92	369.11
C80	75.00	75.00	5,497.87
C81	124.15	124.15	15,749.79
C82	18.40	18.40	270.72
C83	25.00	25.00	371.46
C84	24.92	24.92	369.11
C85	75.00	75.00	5,497.87
C86	124.15	124.15	15,749.79
C87	18.40	18.40	270.72
C88	25.00	25.00	371.46
C89	24.92	24.92	369.11
C90	75.00	75.00	5,497.87
C91	124.15	124.15	15,749.79
C92	18.40	18.40	270.72
C93	25.00	25.00	371.46
C94	24.92	24.92	369.11
C95	75.00	75.00	5,497.87
C96	124.15	124.15	15,749.79
C97	18.40	18.40	270.72
C98	25.00	25.00	371.46
C99	24.92	24.92	369.11
C100	75.00	75.00	5,497.87





**TO:** DEVELOPMENT REVIEW BOARD **DATE:** APRIL 18, 2002  
**FROM:** COMMUNITY DEVELOPMENT  
**SUBJECT:** CASE 6-PP-2002

**REQUEST:** Approve site plan & elevations for preliminary plat  
**PROJECT NAME:** Sevano Village Parcel 3  
**LOCATION:** North of the Northeast Corner of Scottsdale Road and Ashler Hills

**DEVELOPER/OWNER:** Grayhawk Development, Inc.  
**ARCHITECT/DESIGNER:** Tornow Design Associates  
**ENGINEER:** Gilbertson Associates Inc  
**APPLICANT/COORDINATOR:** Gilbertson Associates, Dave Gilbertson  
15974 N 77<sup>th</sup> St  
Scottsdale, AZ 85260  
480 607-2244

**STAFF RECOMMENDATION:** APPROVE subject to the attached stipulations.

**PUBLIC COMMENTS:** This project received significant public dialogue in the fall of 2001 when it went through a General Plan Amendment and Rezoning process.

**LOCATION & ZONING:** This parcel is zoned R1-5 ESL and is located northeast of the Scottsdale Summit retail center.

**CHARACTERISTICS:** The property has many natural amenities including lush native vegetation, washes, and rock outcrops. This property is the former location of the Carefree Studios. A mine shaft from an old movie set remains on the site and will be retained in a common area.

**HISTORY:** Zoning approval for this parcel was given by case 10-ZN-2001.

**DISCUSSION:** This request is for a 90-lot patio home development. The proposed minimum lot size is 4,700 sq. ft. and an average lot size of 6,750 sq. ft.

The overall goal in the development of this property is to reduce the amount of tall retaining walls. The applicant has responded to this goal by orienting the long dimension of the lots parallel to the land contours. Attachment #9 in the staff report illustrates the effectiveness of this technique that results in more variation to the view fencing and wall massing. This method also reduces the number of areas requiring a cut or fill of greater than 8 feet.

Because this site overlooks the service areas of the adjacent commercial parcel, the applicant is proposing a 6-10 foot tall berm along the northeast edge of the future park site which is adjacent to this parcel. This berm will be revegetated in keeping with the

## ATTACHMENT 4

approved Master Environmental Design Concept Plan and will have a variety of slopes and undulation.

**RELATED CASES:** 10-ZN-2001; 69-DR-99

---

Jayna Shewak  
Project Coordination Manager  
480-312-7000

**ATTACHMENTS:**

- #1-Project Narrative
- #2-Aerial
- #3-Zoning Map
- #4-Context Photos
- #5-Sevano Village Master Plan
- #6-Constraints and Opportunities Map
- #7-Site Plan Context
- #8-Site Plan
- #9-Pad Grading Concept
- #10-Hillside Grading Concept
- #11-Preliminary Plat
- #12-Cut/Fill Exhibit
- #13-NAOS Exhibit
- #14-Topography
- A-Stipulations
- B-Ordinance Requirements

**SCOTTSDALE DEVELOPMENT REVIEW BOARD  
KIVA - CITY HALL  
3939 N. DRINKWATER BOULEVARD  
APRIL 18, 2002  
MINUTES**

**PRESENT:** George Zraket, Councilman  
Kay Henry, Planning Commission Member  
Raymond Potter, Vice Chairman  
E.L. Cortez, Design Member  
J.T. Elbracht, Design Member  
Anne Gale, Design Member  
Mark Soden, Design Member

**STAFF:** Suzanne Gunderman  
Kurt Jones  
Jayna Shewak  
Bill Verschuren  
Al Ward  
Jason Yaich

**CALL TO ORDER**

The regular meeting of the Scottsdale Development Review Board was called to order by Councilman Zraket at 1:00 p.m.

**ROLL CALL**

A formal roll call confirmed members present as stated above.

**MINUTES APPROVAL**

March 21, 2002

**VICE CHAIRMAN POTTER MADE A MOTION TO APPROVE THE MARCH 21, 2002 MINUTES AS PRESENTED. SECOND BY MR. ELBRACHT.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

**OPENING STATEMENT**

**COUNCILMAN ZRAKET** read the opening statement which describes the role of the Development Review Board and the procedures used in conducting this meeting.

**CONTINUANCES**

1. 90-DR-1999#2 Cactus Business Suites – office complex

**APPROVED AT THE 6-6-02 DRB HEARING - PC  
ATTACHMENT 5**

Site plan and elevation  
Northeast corner Cactus and Hayden  
**To be continued to May 9, 2002**

**COUNCILMAN ZRAKET** stated that case 82-DR-1998#3A was moved to the regular agenda and would be heard first.

**EXPEDITED AGENDA**

2. 86-DR-1988#6  
Indian Bend Corporate Center –  
Commercial office/condo development  
Site plan & elevations  
Hayden & Indian Bend Roads  
Todd and Associates, Architect/Designer
3. 191-DR-1987#2  
Scottsdale Professional Plaza  
Exterior modifications  
7170 E. McDonald Drive  
Siefer Associates, Architect/Designer
4. 41-DR-1997#9  
Northsight Village Phase II Pad 6  
Site plan and elevations  
15000 N. Northsight Blvd.  
K & I Architects, Architects/Designer
5. 82-DR-1998#3A  
Fox Sports Grill (formerly Mondo's)  
Site plan & elevations  
Northeast corner of Frank Lloyd Wright  
Blvd. & Scottsdale Road

**(PULLED TO REGULAR AGENDA)**

6. 15-DR-2002  
Dr. Roger Briggs Office Building  
Site plan and elevations  
Northeast corner 69<sup>th</sup> & Shea Blvd.  
Matthew Budge and Associates,  
Architect/Designer
7. 16-DR-2002  
DIG Building –  
office/warehouse/showroom  
site plan and elevations  
15530 N. Greenway-Hayden Loop  
James Elson Architects,

**APPROVED AT THE 6-6-06 DRB HEARING - PC**

8. 4-PP-2002 Architect/Designer  
Horseman's East Forty  
Preliminary Plat  
Between 98<sup>th</sup> and 100<sup>th</sup> Street  
South of Bell Road
9. 6-PP-2002 Sevano Village Parcel 3  
Preliminary Plat, Cut and fill over 8'  
North of the Northeast Corner of  
Scottsdale Road and Ashler Hills  
Tornow Design Associates,  
Architect/Designer

**VICE CHAIRMAN POTTER MOVED TO APPROVE CASES 86-DR-1988#6, 191-DR-1987#2, 41-DR-1997#9, 15-DR-2002, 16-DR-2002, 4-PP-2002 AND 6-PP-2002 WITH THE ATTACHED STIPULATIONS. SECONDED BY MS. HENRY.**

**MR. ELBRACHT** stated the motion should reflect the driveway stipulation change to case 16-DR-2002 and the amended stipulations on case 4-PP-2002.

**MS. SHEWAK** stated the motion should also reflect the amended stipulations on case 86-DR-1988#6.

**VICE CHAIRMAN POTTER MODIFIED THE MOTION TO INCLUDE THE DRIVEWAY STIPULATION CHANGE TO CASE 16-DR-2002 AND THE AMENDED STIPULATIONS ON CASES 86-DR-1988#6 AND 4-PP-2002.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

**REGULAR AGENDA**

5. 82-DR-1998#3A Fox Sports Grill (formerly Mondo's)  
Site plan & elevations  
Northeast corner of Frank Lloyd Wright  
Blvd & Scottsdale Road

**MR. JONES** presented this case as per the project coordination packet. Staff recommends approval subject to the attached stipulations.

**MR. CORTEZ** stated he has a concern relative to the metallic finish that has been presented. He inquired about the reflectivity of that and its location within the elevation. **MR. JONES** stated he believed most of the metallic finish was around the windows but the Applicant could explain it in more detail. **MR. CORTEZ** inquired if staff has seen the metallic finish. **MR. JONES** stated that staff is not seeing something overbearing.

**APPROVED AT THE 6-6-06 DRB HEARING - PC**

4. Development Review Board Staff Report
5. Development Review Board Minutes



# City Council Report



MEETING DATE: January 7, 2003

ITEM NO. 7 GOAL: Coordinate Planning to Balance Infrastructure

## SUBJECT

**McDowell Mountain Business Center**

## REQUEST

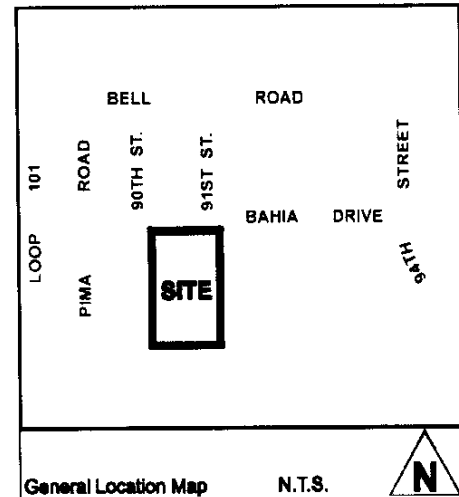
Request to approve:

1. To rezone from Single Family Residential, Planned Community Development (R1-35 PCD) to Industrial Park, Planned Community Development (I-1 PCD) on a 14+/- acre parcel located at the Southeast corner of 90th Street & Bahia Drive.
2. A conditional use permit for automotive and boat assembly and reassembly, excluding general repairs and maintenance, on 1+/- acre.
3. Adoption of Ordinance No. 3483 affirming the above rezoning.

**18-ZN-2002 and 20-UP-2002**

### Key Items for Consideration:

- Rezoning to Industrial Park (I-1 PCD) conforms to the General Plan.
- The associated use permit for a 1-acre parcel provides for an indoor, automotive accessories installation use.
- No other specific users have been identified for the site to date, and in order to allow for flexible site development, no detailed site plan is proposed with the zoning case.
- Community outreach has occurred; no phone calls or letters of objection have been received.
- Planning Commission recommended approval, 6-0.



### Related Policies, References:

Case 33-ZN-2000 created the Horseman's Park Planned Community Development overlay for the site in March 2001.

## OWNER

General's Partners #11

## APPLICANT CONTACT

Vince Dalke  
Archicon LC  
602-222-4266

## LOCATION

Located at the southeast corner of 90th Street and Bahia Drive, and the southwest corner of 91st Street and Bahia Drive.

## BACKGROUND

### Zoning.

The site is zoned Single-Family Residential District (R1-35 PCD) and is proposed to be rezoned to Industrial Park (I-1 PCD) within the Planned

Community District Overlay zoning district, which allows for office, warehouse, and manufacturing/processing uses on the site.

**General Plan.**

The General Plan identifies this area as part of the Regional Use Overlay that supports a wide range of activities of regional and community level uses. The Pima Freeway (101) has promoted a more concentrated mixed-use pattern along this corridor. The Land Use Element designates the property as Employment area. The Employment category permits a range of employment uses from light manufacturing to light industrial and office uses. Locations have been identified for employment areas where impacts on residential neighborhoods are limited.

**Context.**

The surrounding property is zoned Industrial Park (I-1 PCD) on the north, east, and west sides; Western Theme Park (WP) zoning exists for WestWorld to the south.

**APPLICANT'S  
PROPOSAL****Goal/Purpose of Request.****Rezoning Proposal.**

The request is to rezone the approximate 14-acre site from Residential (R1-35 PCD) District to Industrial Park (I-1 PCD) District. The site is located within the area known as Horseman's Park West. The intent of the rezoning is to permit development of a business park on the site. The applicants are requesting flexibility in development of the property under the proposed zoning and in accordance with the areas PCD overlay. At this time, other than the proposed use permit location, the applicants are not providing a specific site plan showing the location of buildings or internal circulation patterns on the site. The concept is to provide for build-to suit site opportunities.

The Horseman's Park PCD overlay provides that the maximum allowable Floor Area Ratio (FAR) is 0.40, while maximum building heights are 36 feet with rooftop mechanical screening up to 42 feet. The street system and drainage provisions for this area are also identified by the PCD overlay and are incorporated into the parameters for the site. A north south drainage feature that runs through this site is also identified in the PCD overlay and will be protected through the development process. The Verde Canal berm will be retained in its natural state wherever possible, with a future trail system.

The streets improvements include 90th St. along the west side, 91<sup>st</sup> along the east, and Bahia Drive along the north side of the site. All street and infrastructure improvements have been constructed as part of the Bell Road II Improvement District.

**Key Issues.**

Rezoning of the site supports the area's ongoing conversion and development to industrial and commercial use, in conformance with the General Plan and PCD overlay.

The applicant is requesting the flexibility to develop the site on a build-to-suit basis as future development proposals are submitted. No detailed site plan other than the use permit proposal, is contained with this case. The PCD

overlay, which limits height and square footage, along with the stipulations will ensure that future development is consistent with the character of the area.

**Community Impact.**

The proposed rezoning and automotive accessories installation use is not anticipated to create a negative impact on the surrounding community, which contains other industrial and commercial users, as well as WestWorld to the south. No residential uses exist or are proposed for this area. The development will provide growth opportunities for the Horseman's Park employment center. The existing road network can adequately accommodate the additional traffic resulting from this proposal. The proposed land use is compatible to this area.

**IMPACT ANALYSIS**

**Traffic.**

**Zoning Traffic.**

The approval of this rezoning request will generate an estimated 1,477 trips per day. This represents a significant increase in trip generation compared to projections of the same if the site were developed as an R-35 single-family residential subdivision with 18 dwelling units; however, this proposal represents a decrease in trips compared to the office park land use that was assumed for the site in the traffic study for the Bell Road II Improvement District. The traffic study for the Bell Road II Improvement District assumed industrial and business park land uses for parcels in the area, to estimate traffic and adequately size the roadway network. Capacity analysis at the five intersections near the project site demonstrates that with site traffic, the intersections will operate at LOS A and B for the morning and evening peak hours in the horizon year 2005. (See Attachment 7 for the Traffic Impact Study and staff analysis)

**Use Permit Traffic.**

Traffic generated by the use permit portion of the request, the automotive accessories installation use, is not significant with respect to the overall capacity of the street system for this area. The estimated traffic generation for this use including service personnel is estimated to be about 20 vehicles per day.

**Parking.**

- No specific site plan is associated with the rezoning case, while the use permit provides for 31 parking spaces and 29 spaces required. City staff and the Development Review Board will assure that adequate parking is provided in conformance with the Ordinance, when subsequent development applications are submitted for this site.

**Development information.**

- *Existing Use:* Vacant, undeveloped land
- *Buildings/Description:* One building proposed at present, further buildings proposed as future demand exists
- *Parcel Size:* 14.48-acres overall, 1-acre for use permit
- *Building Height Allowed:* 36 ft., 42 ft. to top of mechanical screening

- *Existing Building Height:* no existing buildings on site
- *Floor Area:* maximum allowable 0.40, 10,400 sq. ft.
- *Other:* protection of the old Verde Canal and development of a trail along the canal

**Water/Sewer.**

Sewer and water lines are provided to the site as part of the Bell Road II Improvement District.

**Police/Fire.**

Rural/Metro Fire Department has reviewed this proposal and it conforms to the minimum requirements for fire protection and fire apparatus access.

**Open space, scenic corridors.**

The Horseman's Park PCD overlay provides for the protection of the old Verde Canal and use of the area for the location of a trail.

**Use Permit Request.**

The use permit proposal is for an approximate 1-acre parcel located near the northeast corner of the 14-acre larger site, with frontage onto 91st Street. The applicant is requesting use permit approval (Case 20-UP-2002) for a boat and automobile assembly business. The 10,400 square foot building will provide for the on-site installation of automobile accessories such as mobile theatres, anti-theft devices, navigation systems, satellite radios, etc. The applicant estimates that only about 8-10 vehicles a week will be serviced at the facility, with two vehicles being accommodated in the two service bays at a time.

About half of the building will contain office uses while the remainder will contain parts storage and the noted two-bay service area. All installation and service work will occur indoors and no visual, noise or aesthetic impacts are expected. No general auto repair or maintenance work will occur. The automobile accessories, options and installation work conducted by this use is provided for new car dealerships only.

**Use Permit Criteria.**

Conditional use permits, which may be revocable, conditional, or valid for a specified time period, may be granted only when expressly permitted after the Planning Commission has made a recommendation and the City Council has found as follows:

- A. That the granting of such conditional use permit will not be materially detrimental to the public health, safety or welfare. In reaching this conclusion, the Planning Commission and the City Council's consideration shall include, but not be limited to, the following factors:
  1. Damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination.
    - ***No vehicle maintenance or repair will occur at the site. No impact from noise, smoke, odor, dust, etc. will be created that will adversely affect adjacent properties.***
  2. Impact on surrounding areas resulting from an unusual volume or character of traffic.

- *No undue volume or character of traffic is associated with this request. The traffic volumes were anticipated by the General Plan and necessary capacities have been incorporated into the construction of the streets serving this area.*
- 3. There are no other factors associated with this project that will be materially detrimental to the public.
  - *The project contains internalized installation of automobile components and will have no impact on the surrounding properties.*
- B. The characteristics of the proposed conditional use are reasonably compatible with the types of uses permitted in the surrounding areas.
  - *The site will be surrounded by future industrial zoned uses such as office, warehouse, and production uses. The proposed vehicle accessory installation use will be complimentary and compatible to these uses.*
- C. The additional conditions specified in Section 1.403, as applicable, have been satisfied.

**Community Involvement.**

The applicant held neighborhood meetings in conformance with City public notification requirements.

No neighbors or concerned citizens attended the meetings; however, a representative of Coalition of Pinnacle Peak inquired by phone if applicants intended to conform to the Horseman's Park PCD guidelines. The applicants assured the representative that the projects would conform to the PCD guidelines and advised that they will continue to keep the Coalition informed of the status of the project as it proceeds. No phone calls, letters, faxes, or e-mail inquiries have been received by staff on this project.

**STAFF AND  
PLANNING  
COMMISSION  
RECOMMENDATION**

**Recommended Approach:**

Staff and the Planning Commission recommend approval, subject to the attached stipulations.

**Planning Commission Hearing**

No citizen comment cards were submitted and no citizens spoke at the Planning Commission Hearing. The Planning Commission had questions of Staff regarding the Use Permit portion of the case. The questions related to:

- The type of use and the category under which "automobile and boat assembly and reassembly, excluding general repairs and maintenance" was used for the proposed "automotive accessories installation use."
- A Commission member discussed potential noise issues with the use
- After discussions with Staff regarding the design and size of the use, the Commission proceeded to approve the case without additional stipulations

**Planning Commission Recommendation**

The Planning Commission at the November 13, 2002 meeting recommended to approve Case 18-ZN-2002 the rezoning request on the expedited agenda subject to the attached stipulations. Also, the Planning Commission recommended to approve Case 20-UP-2002 the Use Permit request on the regular agenda, subject to findings of conformance to the conditional use permit criteria and the attached stipulations. Both votes to approve were 6-0.

**RESPONSIBLE****Planning and Development Services Department****DEPT(S)**

Current Planning Services

**STAFF CONTACT(S)**

Al Ward  
Senior Planner  
480-312-7067  
E-mail: [award@ci.scottsdale.az.us](mailto:award@ci.scottsdale.az.us)

**APPROVED BY**  
Kroy Ekblaw

Planning and Development Services General Manager

12/13/02  
Date  
Ed Gawf

Deputy City Manager

12/13/02  
Date**ATTACHMENTS**

1. Applicant's Narrative
2. Context Aerial
- 2A. Aerial Close-Up
3. Land Use Map
4. Existing Zoning
- 4A. Proposed Zoning
5. Stipulations
6. Additional Information
7. Traffic Impact Summary
8. Citizen Involvement
9. November 13, 2002 Planning Commission Minutes
10. Ordinance No. 3483
- Exhibit 1. Stipulations
- Exhibit 2. Site Plan
11. Zoning Site Plan
12. Use Permit Site Plan

## **Project Narrative: McDowell Mountain Business Center**

### **(Rezoning and Use Permit)**

#### **I. Land Use**

This application concerns the approximately 14-acre, undeveloped parcel (the “Property”) located at the southwest corner of 91<sup>st</sup> Street and Aire Libre Lane. We are seeking a zoning change from R1-35 to I-1. The Scottsdale General Plan Designation for the Property is Minor Employment. The Property is part of the Approximately 173-acres Horseman’s Park PCD Area, which is designed to regulate the development of commercial and industrial uses. Nearly all the surrounding property in the Horseman’s Park West PCD Area has been rezoned to I-1 (with the balance being C-2, C-3, and C-4). This is one of the last parcels to be rezoned and the proposal is fully consistent with the General Plan, the Horseman’s Park West PCD and the zoning given to the surrounding properties.

#### **II. Architectural.**

The overall concept for the development of the Property is to provide build-to-suit projects. The Horseman’s Park PCD Area design guidelines help establish an architectural character and palate that will be maintained in the future buildings. The goal of this development is consistent with this concept; all of the buildings will have a similar palate of materials, colors, and architectural features tying all of the projects together within a localized node.

In the center of the project, the wash will remain open and visible with the goal of maintaining the character of a typical desert wash. To that end, the wash will be slightly

relocated, but trees from the project sites will be reused along the bank as well as along the street frontage to help develop continuity with the new landscaping that will be added for each project. This type of treatment will be utilized for the area north of the Verde Canal Berm; the area south of the berm will remain in a natural state.

Access to the project comes through Bahia Drive to the North, 90<sup>th</sup> Street to the West, and 91<sup>st</sup> Street to the East. All of these city streets were designed to accommodate I-1 uses and expected lot coverage of 40%. The driveways will be spaced and located as shown on the plan and/or in accordance with design review for each project on a case-by-case basis.

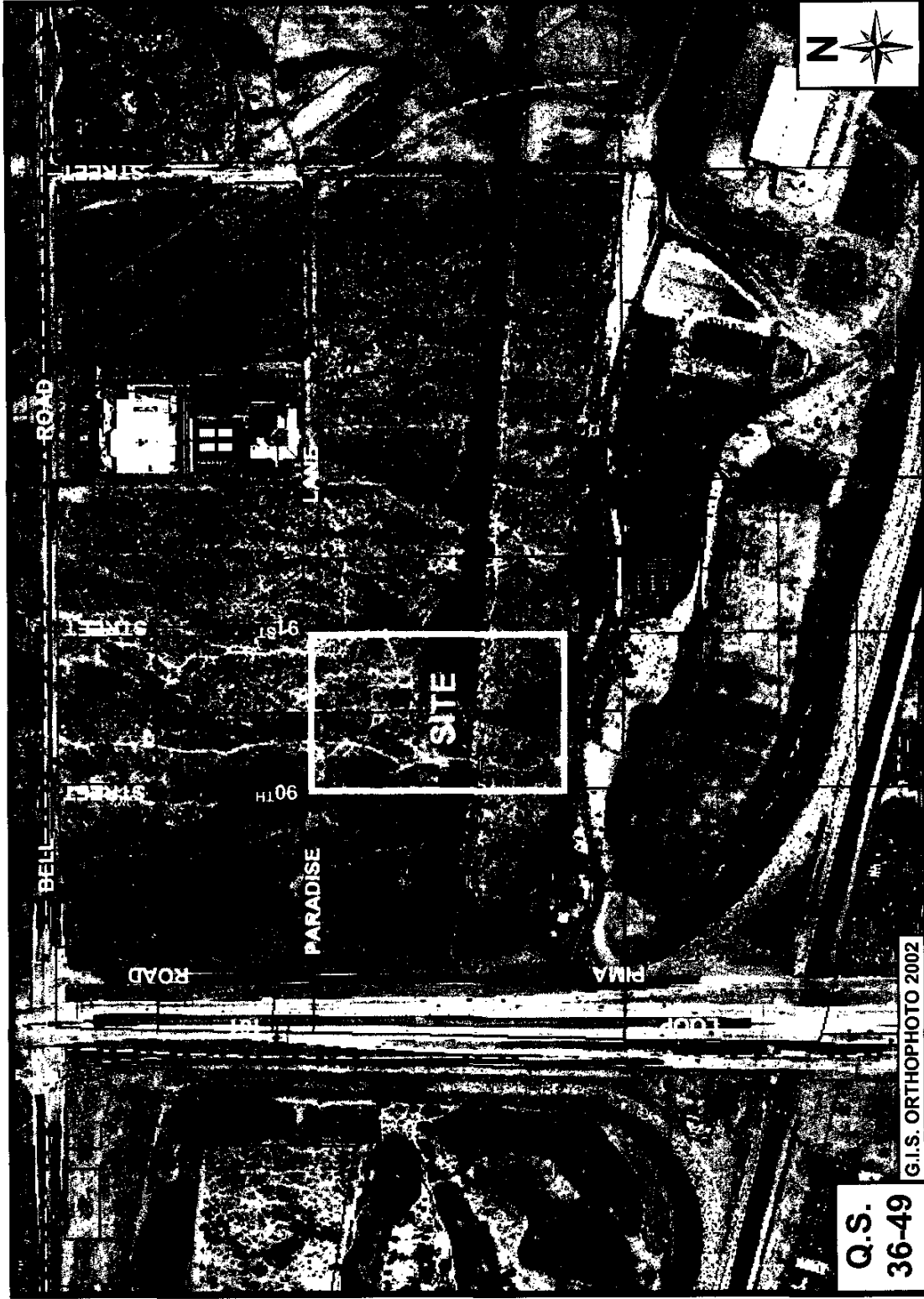
## **II. Use Permit**

Insured Dealer Services, Inc. (“IDS”) will occupy a portion of the McDowell Mountain Business Center. A small percentage of IDS’ business will include on-site installation of automobile accessories, such as window etch theft deterrent systems, alarms, mobile theatres, navigation systems, satellite radios, and car stereo equipment. IDS expects to service a maximum of eight to ten cars per week. We seek a use permit under the I-1 classification pursuant to Section 5.1803(B)(3): “Automobile and boat assembly and reassembly, excluding general repairs and maintenance.”

As can be seen from the attached proposed floor plan for the IDS building, roughly half of IDS’ space will be for offices, and the other half will be for parts storage and for a smaller service area. The service area will only accommodate two vehicles at one time, and will not contain any lift equipment or heavy machinery that would typically be found at an automobile repair center. IDS will not sell accessories directly to the public, nor will IDS provide installation services directly to the public.

By servicing at most two cars per day, IDS will not create a consequential effect on local traffic. The installations will be performed indoors; therefore, there will be no adverse visual or sound affects. In fact, because the installations will be performed indoors, we expect that IDS' installation use, from an exterior perspective, will be indistinguishable from other I-1 uses in the area.





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G.I.S. ORTHOPHOTO 2002



18-ZN-2002

ATTACHMENT #2

McDowell Mountain Business Center

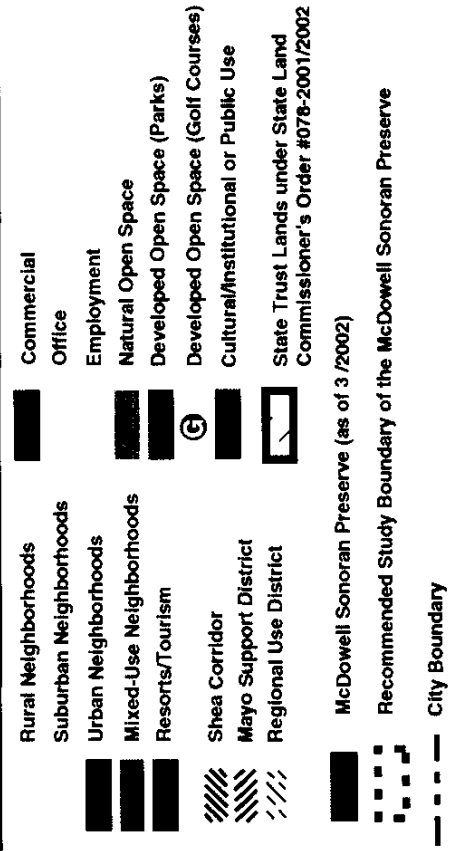
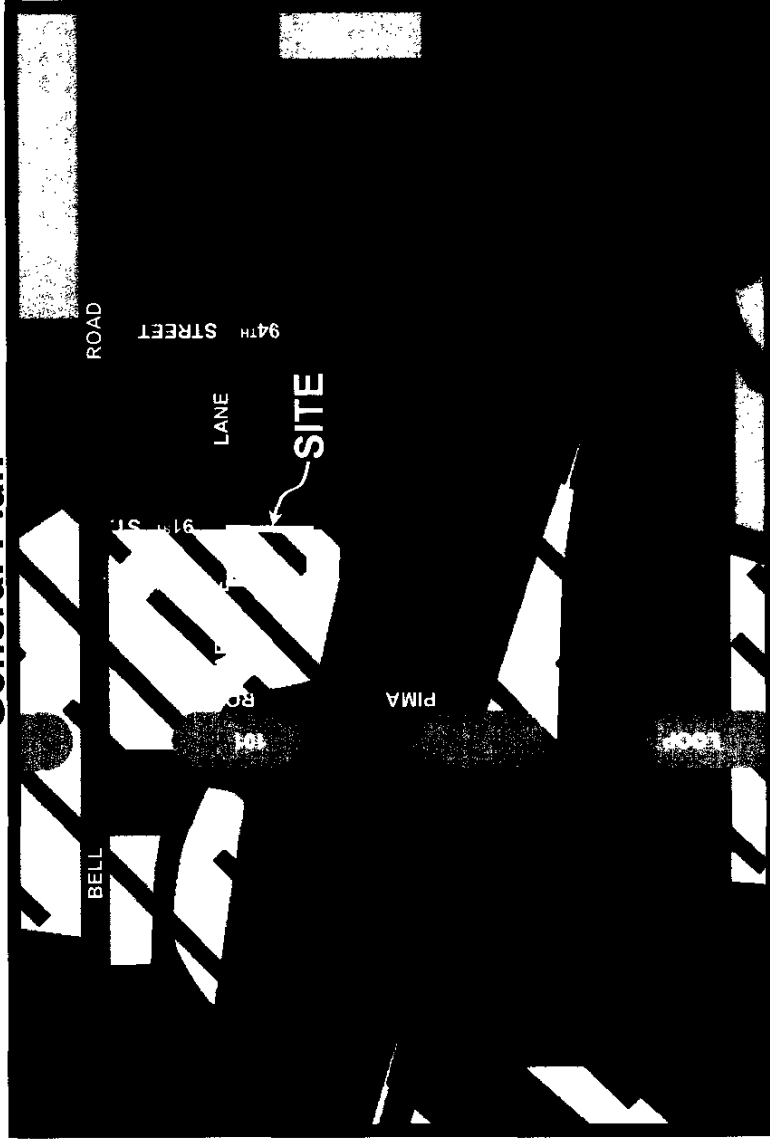


18-ZN-2002

McDowell Mountain Business Center

ATTACHMENT #2A

# General Plan



**18-ZN-2002**  
ATTACHMENT #3







## STIPULATIONS FOR CASES 18-ZN-2002 AND 20-UP-2002

Note; the following stipulations apply to both the zoning and use permit cases unless otherwise specified to apply to only one of the cases.

### PLANNING/ DEVELOPMENT

1. **CONFORMANCE TO DEVELOPMENT SUBMITTAL.** Development shall conform to the site plans submitted by Archicon, L.C. and dated 25 October 2002. These stipulations take precedence over the above-referenced site plan. Any proposed significant change, as determined by the Zoning Administrator, shall be subject to subsequent public hearings before the Planning Commission and City Council.
2. **DEVELOPMENT CONTINGENCIES.** The approved development program, including intensity, may be changed due to drainage issues, topography, and other site planning concerns which will need to be resolved at the time of site plan approval. Appropriate design solutions to these constraints may preclude achievement of the proposed development program.

### DRAINAGE MASTER PLAN

1. **MASTER DRAINAGE REPORT.** With the Development Review Board submittal, the developer shall submit a master drainage report and plan for the entire site, subject to city staff approval. The master drainage report and plan shall conform to the Design Standards and Policies Manual - Drainage Report Preparation. In addition, the master drainage report and plan shall:
  - a. Include a complete description of requirements relating to project phasing.
  - b. Identify the timing of and parties responsible for construction of all storm water management facilities.
2. **MASTER DRAINAGE REPORT COPIES.** Before master drainage report approval by the Drainage Planning Department, the developer shall, when requested by city staff, submit two (2) hard copies and one (1) disc copy of the complete master drainage report.
3. **MASTER DRAINAGE REPORT APPROVAL.** Before the improvement plan submittal to the Project Quality/Compliance Division, the developer shall have obtained approval of the master drainage report.

### CIRCULATION

1. **IMPROVEMENT DISTRICT.** Any application within the area designated within the Planned Community District, west of the 94<sup>th</sup> Street alignment, shall conform to all the requirements (monetary and physical improvements) of the Bell Road II Improvement District, Contract Number 2000-168-COS, for the City of Scottsdale.
2. **ACCESS RESTRICTIONS.** Access to the site shall conform to the following restrictions (distances measured to the driveway or street centerlines):
  - a. *The site driveways on 91st Street shall be designed in general conformance with city of Scottsdale Type CL-1, Standard Detail #2256, as determined by city staff.*
  - b. *Before Final Plans approval, the developer shall dedicate a one-foot wide vehicular non-access easement on 91st street and Bahia Road, except at approved driveway locations.*
  - c. *Driveways on 91<sup>st</sup> street and 90<sup>th</sup> street shall be located with a minimum of 165 feet between adjacent driveways and street intersections.*

3. **PEDESTRIAN CIRCULATION PLAN.** With the Development Review Board submittal, the developer shall submit a Pedestrian Circulation Plan for the site, which shall be subject to city staff approval. This plan shall indicate the location and width of all sidewalks and pedestrian pathways.
4. **OLD VERDE CANAL PROTECTION PLAN AND TRAIL DEDICATION.** With the Development Review Board submittal, the developer shall submit a protection plan and 25 ft. wide trail dedication for the Old Verde Canal in conformance with the PCD and MEDCP, which shall be subject to city staff approval.
5. **PRIVATE STREET CONSTRUCTION.** All private streets shall be constructed to full public street standards, except equivalent construction materials or wider cross-sections may be approved by city staff. In addition, all private streets shall conform to the following requirements:
  - a. No internal private streets shall be incorporated into the city's public street system at a future date unless they are constructed, inspected, maintained and approved in conformance with the city's public street standards. Before any lot is sold, the developer shall record a notice satisfactory to city staff indicating that the private streets shall not be maintained by the city.
  - b. Before issuance of any certificate of occupancy for the site, the developer shall post access points to private streets to identify that vehicles are entering a private street system.
  - c. Secured access shall be provided on private streets only. The developer shall locate security gates a minimum of 75 feet from the back of curb to the intersecting street. The developer shall provide a vehicular turn-around between the public street and the security gate.

#### DRAINAGE AND FLOOD CONTROL

1. **CONCEPTUAL DRAINAGE REPORT.** With the Development Review Board submittal, the developer shall submit a conceptual drainage report and plan subject to city staff approval. The conceptual report and plan shall conform to the Drainage Master Plan (required above) and Design Standards and Policies Manual - Drainage Report Preparation. In addition, the conceptual drainage report and plan shall:
  - a. Identify all major wash corridors entering and exiting the site, and calculate the peak discharge (100-yr, 6-hr storm event) for a pre- versus post-development discharge comparison of ALL washes which exit the property.
  - b. Determine easement dimensions necessary to accommodate design discharges.
  - c. Demonstrate how the storm water storage requirement is satisfied, indicating the location, volume and drainage area of all storage.
  - d. Include flood zone information to establish the basis for determining finish floor elevations in conformance with the Scottsdale Revised Code.
  - e. Include a complete description of requirements relating to project phasing.
2. **FINAL DRAINAGE REPORT.** With the improvement plan submittal to the Project Quality/Compliance Division, the developer shall submit a final drainage report and plan subject to city staff approval. The final drainage report and plan shall conform to the Design Standards and Policies Manual – Drainage Report and Preparation. In addition, the final drainage report and plan shall:
  - a. Demonstrate consistency with the approved master drainage plan and report.: Bell Road II Improvement District prepared by Gannett Fleming (GF Job No. 38406), approved by the City of Scottsdale on August 6, 2001, for the Contract No. 2000-168-COS.

- b. With respect to the to the above,
    - (1) Any design that modifies the approved master drainage report requires from the developer a site-specific addendum to the final drainage report and plan, subject to review and approval by the city staff.
    - (2) Addendum generated by the final drainage analysis for this site shall be added to the appendix of the final drainage report.
  - c. Provide final calculations and detailed analysis that demonstrate consistency with the accepted conceptual drainage plan and report.
4. Underground stormwater storage: The properties/areas north of the Old Verde Canal, shall not be allowed to store stormwater underground. The area has good positive slope throughout the site. Before Final Plans submittal, the developer shall prepare their site plan to maximize the above ground storage capacity available on the site, subject to city staff approval.

Before scheduling for DRB approval, the developer shall have obtained a storm water storage waiver(s), subject to city staff approval, that meet the following criteria:

- a). Properties\areas north of the Old Verde Canal berm, must obtain a Stormwater Storage Waiver and must provide stormwater storage (onsite) to the extent that post-development stormwater flows do not exceed pre-development flows.
- b). Properties/areas south of the Old Verde Canal berm, must obtain a Stormwater Storage Waiver, but do not have to store any stormwater on site.

With the Development Review Board submittal, the developer shall address the following items in the drainage report. Delineate and label the drainage sub areas and show all grade breaks on the G&D plan. Using a tabular format summarize the following: Calculate the volume required and volume provided in each drainage sub area. Show which specific drainage sub areas flow into a specific detention basin.

- 5. STORM WATER STORAGE EASEMENTS. With the Development Review Board submittal, the developer shall submit a site plan subject to city staff approval. The site plan shall include and identify tracts with easements dedicated for the purposes of storm water storage, in conformance with the Scottsdale Revised Code and the Design Standards and Policies Manual.
- 6. DRAINAGE EASEMENTS. Before the issuance of any building permit for the site, the developer shall dedicate to the city, in conformance with the Scottsdale Revised Code and the Design Standards and Policies Manual, all drainage easements necessary to serve the site.

#### VERIFICATION OF COMPLIANCE

- 1. REQUIRED SPECIAL INSPECTIONS. Before the approval of the improvement plans, the Project Quality/Compliance Division staff shall specify those drainage facilities that shall be required to have Special Inspections. See Section 2-109 of the Design Standards and Policies Manual for more information on this process.
- 2. CONDITION FOR ISSUANCE OF GRADING & DRAINAGE PERMIT. Before the issuance of a Grading & Drainage Permit:
  - a. The developer shall certify to the Project Quality/Compliance Division, that it has retained an Inspecting Engineer by completing Part I (Project Information) and Part II (Owner's Notification

- of Special Inspection) of the Certificate of Special Inspection of Drainage Facilities (CSIDF); and,
- b. The Inspecting Engineer shall seal, sign and date Part III (Certificate of Responsibility) of the CSIDF.
3. **CONDITION FOR ISSUANCE OF CERTIFICATE OF OCCUPANCY AND/OR LETTER OF ACCEPTANCE.** Before the issuance of a Certificate of Occupancy and/or a Letter of Acceptance, the following requirements shall be met to the satisfaction of city staff:
- a. The Inspecting Engineer shall seal, sign and date the Certificate of Compliance form.
  - b. The developer shall submit all required Special Inspection Checklists and the completed Certificate of Compliance form to the Inspection Services Division. The Certificate of Compliance form shall be sealed, signed and dated by the Inspecting Engineer, and shall be attached to all required Special Inspection Checklists completed by the Inspecting Engineer.
4. **AS-BUILT PLANS.** City staff may at any time request the developer to submit As-built plans to the Inspection Services Division. As-built plans shall be certified in writing by a registered professional civil engineer, using as-built data from a registered land surveyor, and submitted within 30 days of city staff's request. As-built plans for drainage facilities and structures shall include, but are not limited to, streets, lot grading, storm drain pipe, valley gutters, curb and gutter, flood walls, culverts, inlet and outlet structures, dams, berms, lined and unlined open channels, storm water storage basins and underground storm water storage tanks, bridges as determined by city staff.

#### WATER and WASTEWATER

1. Community District, west of the 94<sup>th</sup> Street alignment, shall conform to all the requirements (monetary and physical improvements) of the Bell Road II Improvement District, Contract Number 2000-168-COS, for the City of Scottsdale.

#### OTHER REQUIREMENTS

1. **ENVIRONMENTAL PROTECTION AGENCY (EPA) REQUIREMENTS.** All construction activities that disturb five or more acres, or less than five acres if the site is a part of a greater common plan, shall obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Construction Activities. [NOI forms are available in the City of Scottsdale One Stop Shop, 7447 East Indian School Road, Suite 100. Contact Region 9 of the U.S. Environmental Protection Agency at 415-744-1500, and the Arizona Department of Environmental Quality at 602-207-4574 or at web site <http://www.epa.gov/region>.  
The developer shall:
  - a. Submit a completed Notice of Intent (NOI) to the EPA.
  - b. Submit a completed Storm Water Pollution Prevention Plan (SWPPP) to the EPA.
2. **NOTICE OF INTENT (NOI).** With the improvement plan submittal to the Project Quality/Compliance Division, the developer shall submit a copy of the NOI.
3. **SECTION 404 PERMITS.** With the improvement plan submittal to the Project Quality/Compliance Division, the developer' engineer must certify that it complies with, or is exempt from, Section 404 of the Clean Water Act of the United States. [Section 404 regulates the discharge of dredged or

fill material into a wetland, lake, (including dry lakes), river, stream (including intermittent streams, ephemeral washes, and arroyos), or other waters of the United States.]

4. **DUST CONTROL PERMITS.** Before commencing grading on sites 1/10 acre or larger, the developer shall have obtained a Dust Control Permit (earth moving equipment permit) from Maricopa County Division of Air Pollution Control. Call the county 602-507-6727 for fees and application information.
5. **UTILITY CONFLICT COORDINATION.** With the improvement plan submittal to the Project Quality/Compliance Division, the developer shall submit a signed No Conflict form (not required for city owned utilities) from every affected utility company.
6. **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY REQUIREMENTS (ADEQ).** The developer shall be responsible for conformance with ADEQ regulations and requirements for submittals, approvals, and notifications. The developer shall demonstrate compliance with Engineering Bulletin #10 Guidelines for the Construction of Water Systems, and Engineering Bulletin #11 Minimum Requirements for Design, Submission of Plans, and Specifications of Sewerage Works, published by the ADEQ. In addition:
  - a. Before approval of final improvement plans by the Project Quality/Compliance Division, the developer shall submit a cover sheet for the final improvement plans with a completed signature and date of approval from the Maricopa County Environmental Services Department (MCESD).
  - b. Before issuance of encroachment permits by city staff, the developer shall provide evidence to city staff that a Certificate of Approval to Construct Water and/or Wastewater Systems has been submitted to the MCESD. This evidence shall be on a document developed and date stamped by the MCESD staff.
  - c. Before commencing construction, the developer shall submit evidence to city staff that Notification of Starting Construction has been submitted to the MCESD. This evidence shall be on a document developed and date stamped by the MCESD staff.
  - d. Before acceptance of improvements by the city Inspection Services Division, the developer shall submit a Certificate of Approval of Construction signed by the MCESD and a copy of the As-Built drawings.
  - e. Before issuance of Letters of Acceptance by the city Inspection Services Division, the developer shall:
    - (1) Provide to the MCESD, As-Built drawings for the water and/or sanitary sewer lines and all related facilities, subject to approval by the MCESD staff, and to city staff, a copy of the approved As-Built drawings and/or a Certification of As-Built, as issued by the MCESD.
    - (2) Provide to the MCESD a copy of the Engineers Certificate of Completion with all test results, analysis results, and calculations, as indicated on the form.
    - (3) Provide to the MCESD a copy of the Request for Certificate of Approval of Construction of water and/or sanitary sewer lines with all appropriate quantities.
    - (4) Provide the city Inspection Services Division a copy of the Certificate of Approval of Construction, as issued by the MCESD.

#### USE PERMIT REQUIREMENTS

1. No maintenance or repair of vehicles is permitted on the site.
2. All installation of automotive related equipment authorized by this use permit shall be conducted completely within the building.



## ADDITIONAL INFORMATION FOR CASES 18-ZN-2002 AND 20-UP-2002

**CHANGES MADE BY STAFF SUBSEQUENT TO THE PLANNING COMMISSION MEETING ARE SHOWN IN UPPER CASE BOLD LETTERS.**

### PLANNING/DEVELOPMENT

1. DEVELOPMENT REVIEW BOARD. The City Council directs the Development Review Board's attention to:
  - a. wall design **AS IT RELATES TO SCREENING FROM THE WESTWORLD FACILITY**, massing of buildings,
  - b. the type, height, design, and intensity of proposed lighting on the site, to ensure that it is compatible with the adjacent use,
  - b. signage,
  - c. protection of the old Verde Canal and trail provision
  - d. conformance to the Horseman's Park West PCD and MEDCP
2. NOTICE TO PROSPECTIVE BUYERS. The developer shall record a notice to prospective owners that the property is located within the Airport Influence Area. Also, prior or simultaneous to the issuance of titles for each lot, the developer shall give the following information in writing to all prospective buyers of the site:
  - a. The property in within the Airport Influence Area.
  - b. The closest distance from the lot to the midpoint of the Scottsdale Airport runway.
  - c. The City shall not maintain the development's private streets.
  - d. The City shall not accept any common areas on the site for ownership or maintenance.

### ENGINEERING

1. RESPONSIBILITY FOR CONSTRUCTION OF INFRASTRUCTURE. The developer shall be responsible for all improvements associated with the development or phase of the development and/or required for access or service to the development or phase of the development. Improvements shall include, but not be limited to washes, storm drains, drainage structures, water systems, sanitary sewer systems, curbs and gutters, paving, sidewalks, streetlights, street signs, and landscaping. The granting of zoning/use permit does not and shall not commit the city to provide any of these improvements.
2. FEES. The construction of water and sewer facilities necessary to serve the site shall not be in-lieu of those fees that are applicable at the time building permits are granted. Fees shall include, but not be limited to the water development fee, water resources development fee, water recharge fee, sewer development fee or development tax, water replenishment district charge, pump tax, or any other water, sewer, or effluent fee.
3. STREET CONSTRUCTION STANDARDS. The streets for the site shall be designed and constructed to the standards in the Design Standards and Policies Manual.
4. CITY CONTROL OF ACCESS. The city retains the right to modify or void access within city right-of-way. The city's responsibility to promote safe conditions for the traveling public takes precedence over the stipulations above.



## **TRAFFIC IMPACT ANALYSIS SUMMARY**

### **McDowell Mountain Business Center 18-ZN-2002 & 20-UP-2002**

#### **Existing Conditions:**

The proposed site for the McDowell Mountain Business Center is located in the Horseman's Park Area, south of Bell Road and 90<sup>th</sup> Street. The site is located on the south side of Bahia Drive between 90<sup>th</sup> and 91<sup>st</sup> Streets. The streets in the vicinity of the project are all under construction at this time as part of the Bell Road II Improvement District. Construction is expected to be complete in Fall of 2002. Because the streets were under construction at the time of the traffic study for this project, no current traffic volumes were collected. The roadway classifications, intersection traffic control, and number and location of auxiliary turn lanes were determined in a traffic study for the Bell Road II Improvement District Project. This traffic study was prepared by Gannett Fleming. In the traffic study, it was assumed that the vacant land within the Improvement District boundaries would be developed as office and industrial type uses.

Bahia Drive, 90<sup>th</sup> Street and 91<sup>st</sup> Street are classified as Neighborhood System streets on the Community Mobility Element of the City's General Plan. Bahia Drive is being constructed as a minor collector street. It will have one lane in each direction with a center two-way left turn lane and bike lanes. Bahia Drive will run from the Loop 101 Frontage Road to 94<sup>th</sup> Street. 90<sup>th</sup> Street and 91<sup>st</sup> Street both run from Bell Road to just south of Bahia Drive where they both terminate in a cul-de-sac. 90<sup>th</sup> Street and 91<sup>st</sup> Street are being constructed as local commercial streets. They will each be 36 foot wide unmarked streets along the project site frontage. At the intersection with Bahia Drive, 90<sup>th</sup> Street and 91<sup>st</sup> Street will each have a separate left turn lane. North of the intersection with Bahia Drive, 91<sup>st</sup> Street widens to become two lanes in each direction with a landscaped median. The posted speed limit on Bahia Drive, 90<sup>th</sup> Street, and 91<sup>st</sup> Street will be 35-MPH.

Bell Road is also classified as a Neighborhood System street. It has two lanes in each direction separated by a landscaped median and functions as a minor arterial street. Bell Road runs from Hayden Road to approximately 108<sup>th</sup> Street where it turns south and becomes McDowell Mountain Ranch Road. The posted speed limit on Bell Road is 45-MPH.

Five intersections near the project site were evaluated as part of this study. The intersections of 90<sup>th</sup> Street/Bahia Drive and 91<sup>st</sup> Street/Bahia Drive will both be side street stop controlled. Bahia Drive is the main street for both intersections. The intersection of 90<sup>th</sup> Street/Bell Road will be a tee intersection with stop control for 90<sup>th</sup> Street and a median break that prohibits left turns from 90<sup>th</sup> Street to Bell Road. The intersection of 91<sup>st</sup> Street/Bell Road will also be a tee intersection but will have a traffic signal and a full access median break. The intersection of Bahia Drive/Loop 101 Frontage Road will be a tee intersection and will have stop control for Bahia Drive. Since the Loop 101 Frontage Road is one way northbound, only right turns are permitted from Bahia Drive at the intersection.

Traffic collision data was reviewed for Bell Road between the Loop 101 Frontage Road and 94<sup>th</sup> Street for the years 2001 and 2002. There were no significant accident patterns. Further, conditions on Bell Road have been significantly improved with the addition of a landscaped median and traffic signals through the Bell Road II Improvement District.

**Proposed Development:**

This case proposes to develop the project site as approximately 211,860 square feet of general light industrial type uses. The existing zoning on the project site is R1-35, which would allow the site to be developed as a single-family subdivision with 18 dwelling units. To accommodate the proposed industrial park, this Zoning Case proposes to change the zoning on the project site to I-1. A use permit is also being requested as part of this case to develop an automotive and boat assembly and reassembly facility on a small section of the site. Under the Scottsdale Zoning Ordinance, this type of use requires a use permit in I-1 zoning. The trip generation characteristics for the section of the site that the use permit applies to are consistent with rest of the project site; therefore, the trip generation characteristics for the use permit were not analyzed separately from the rest of the project site.

In the traffic study for the Bell Road II Improvement Project (Gannett Fleming), development on the project site was assumed to be a 246,985 square foot business park. The trip generation characteristics of the three different zoning and use assumptions are compared in the table below.

**TRIP GENERATION TABLE**

Land Use	Daily Total	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
<b>Existing Zoning – R1-35</b> Single-Family Subdivision 18 dwelling units	172	4	10	14	12	6	18
<b>Proposed Zoning– I-1</b> General Light Industrial 211,860 sq ft	1,477	172	23	195	25	183	208
<b>Use Assumed in Bell Road II Improvement District Traffic Study</b> Business Park 246,985 sq ft	3,152	296	57	353	74	245	319

United Civil Group has prepared a traffic impact study for this project under the City of Scottsdale's Traffic Impact and Mitigation Analysis (TIMA) Program. The traffic impact study compares the trip generation characteristics of the proposed project to the existing zoning and examines the impacts from the proposed project on the local roadway network.

**TRIP GENERATION COMPARISON TABLE**

Land Use	Daily Total	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
<b>Existing Zoning – R1-35</b>							
Single Family Subdivision 18 dwelling units	172	4	10	14	12	6	18
<b>Proposed Zoning– I-1</b>							
General Light Industrial 211,860 sq ft	1,477	172	23	195	25	183	208
<b>Change</b>	<b>+1305</b>	<b>+168</b>	<b>+13</b>	<b>+181</b>	<b>+13</b>	<b>+177</b>	<b>+190</b>
<b>Use Assumed in Bell Road II Improvement District Traffic Study</b>							
Business Park 246,985 sq ft	3,152	296	57	353	74	245	319
<b>Proposed Zoning– I-1</b>							
General Light Industrial 211,860 sq ft	1,477	172	23	195	25	183	208
<b>Change</b>	<b>-1675</b>	<b>-124</b>	<b>-34</b>	<b>-158</b>	<b>-49</b>	<b>-62</b>	<b>-111</b>

The Trip Generation Comparison Table above shows that the proposed I-1 zoning will result in an increase of 1,305 daily trips for the site compared with the existing R1-35 zoning. The Trip Generation Comparison Table also shows that the proposed I-1 zoning and general light industrial use will result in half as many trips as the business park use that was assumed in the traffic study to size the local roadway network.

**Future Conditions:**

The traffic study prepared by United Civil Group analyzes the traffic conditions and the estimated traffic generated by the proposed project for the horizon year of 2005. Traffic analysis was performed using the total of the traffic generated by this proposed project and the background traffic volumes assumed in the Bell Road II Improvement District (Gannett Fleming) Study. Capacity analysis shows that all five of the nearby intersections will operate at Level of Service (LOS) A during the morning and evening peak hours except for the intersection of Bahia Drive/Loop 101 Frontage Road. That intersection will operate at LOS A during the morning peak hour but will operate at LOS B during the evening peak hour.

**Additional Information:**

The project site will be served by 11 driveway accesses. Four driveways will be from 90<sup>th</sup> Street, two driveways will be from Bahia Drive, and 5 driveways will be from 91<sup>st</sup> Street. All driveways are planned to provide full access. Right turn deceleration lanes are not needed at any of the site driveways. Minimum spacing between driveways shall be 165 feet.

**Summary:**

The approval of this rezoning request will likely generate 1,477 trips per day. This represents a significant increase in trip generation compared to if the site were developed as a single-family residential subdivision; however, this proposal represents a decrease in trips compared to the office park land use that was assumed for the site in the traffic study for the Bell Road II Improvement District. The traffic study for the Bell Road II Improvement District assumed industrial and business park land uses for parcels in the area to estimate traffic and adequately size the roadway network for the area. Capacity analysis at the five intersections near the project site demonstrates that with site traffic, the intersections will operate at LOS A and B for the morning and evening peak hours in the horizon year 2005.

**Staff Concerns:**

- Internal circulation should be designed to permit vehicles to access all points within the site without exiting and re-entering through another driveway.

**Withey Anderson & Morris**  
A PROFESSIONAL LIMITED LIABILITY COMPANY

August 16, 2002

2525 E. Arizona Biltmore Circle  
Suite A-212  
Phoenix, Arizona 85016  
Telephone (602) 230-0600  
Facsimile (602) 212-1787

**Via Hand Delivery**

Kurt Jones  
City of Scottsdale  
Planning & Zoning Department  
7447 East Indian School Road  
Scottsdale, AZ 85251


Re: SWC 91st Street and **Bahia** Lane; 208-PA-02

Dear Mr. Jones:

Please find enclosed two copies of the Citizen Review Report for the above-referenced case, one for your Rezoning file and one for your Use Permit file. As you will see, we received no opposition to either application. If we need to take any further steps, please let us know as soon as possible. Thank you for your continuing assistance with this matter.

Cordially,

WITHEY ANDERSON & MORRIS P.L.C.

By 

Greg Linaman



**CITIZEN REVIEW REPORT**  
**Case # 208- PA -02**  
**(Rezoning and Use Permit)**

**I.     Public Notice**

- A.     On July 28, 2002 the site was posted with a "Project Under Consideration" sign. (On August 2, photos of the sign and an affidavit of posting were sent to the City.)
- B.     On July 31, the letter attached as Exhibit A was sent to all owners of property within 750 feet of the site, as well as to the Coalition of Pinnacle Peak and the McDowell Mountain Ranch Homeowner's Association. Maps showing the 750-foot radius are attached as Exhibit B.
- C.     On August 8, notice of the applications and neighbor meetings was posted on Neighborhoodlink.com. Print outs of the website information are attached as Exhibit C.
- D.     On August 8, 2002, the 1/8 page advertisement attached as Exhibit D was published in the Arizona Republic and the Scottsdale Tribune.
- E.     The neighbor meetings were held at 11:00 A.M. and 1:30 P.M. on Thursday, August 9, and at 9:00 A.M. on Friday, August 10. The only attendees were Greg Linaman of Applicant Withey Anderson & Morris and the project engineer, Vince Dalke of Archicon.

**II.    Public Input**

The only public input came from Bob Vairo of the Coalition of Pinnacle Peak via a conference call with Greg Linaman and Vince Dalke. Mr. Vairo stated that COPP does not oppose the rezoning to I-1. Mr. Vairo asked for confirmation that the project will conform to the Horseman's Park PCD guidelines, and asked that the Applicant communicate with COPP as the project design evolves. Mr. Dalke confirmed that the Applicant intended to conform to the Horseman's Park PCD guidelines and invited Mr. Vairo to view LGE's existing project in the Horseman's Park area as an example of the quality of LGE's construction and design. This is a "build-to-suit" project. Accordingly, plans are not finalized, but the Applicant agreed to continue to communicate with Mr. Vairo if he has an interest in reviewing the Design Review plans at a later date.



Withey Anderson & Morris  
A PROFESSIONAL LIMITED LIABILITY COMPANY

July 31, 2002

2525 E. Arizona Biltmore Circle  
Suite A-212  
Phoenix, Arizona 85016  
Telephone (602) 230-0600  
Facsimile (602) 212-1787

Re: Southwest corner of 91st Street and Aire Libre Lane

Dear Neighbor:

We represent LGE Design Build, the owner of the undeveloped parcel located at the southwest corner of 91<sup>st</sup> Street and Aire Libre Lane (crosshatched on the map attached hereto as Exhibit A). The parcel is currently designated Minor Employment on the General Plan. On July 22, 2002, we submitted an application to rezone the parcel to I-1. This is consistent with the surrounding zoning (which is for commercial and industrial uses) and the Horseman's Park PCD. The purpose of this letter is to introduce ourselves and to explain LGE's plans for the parcel.

LGE will "build to suit" for the future occupants. Development will be consistent with the approved guidelines for the Horseman's Park area and with existing buildings and uses in the area. In short, LGE's proposed development will be consistent with Scottsdale's General Plan and with the trend of development in this area.

Along with the rezoning application, we have applied for a conditional use permit to allow a user that sells a variety of new car options through automobile dealerships. Some of the options, including items such as mobile theatres, navigation systems, and satellite radios, will be installed on-site. The installations will be performed indoors and on a very limited basis. This use will be imperceptible from outside the user's building. These installations will be performed only for new car dealerships; accessories will not be sold to or installed for the public.

We have scheduled three meetings in the area to get an opportunity to meet you and answer any questions you may have. They will be held on Thursday, August 8<sup>th</sup> at 11:00 a.m. and 1:30 p.m. and Friday, August 9<sup>th</sup> at 9:00 a.m. at the southeast corner of 91<sup>st</sup> Street and Bell Road, as shown on the attached Exhibit B. If you have questions and cannot attend, please feel free to call me directly at (602) 230-0600. Thank-you for your courtesy and cooperation.

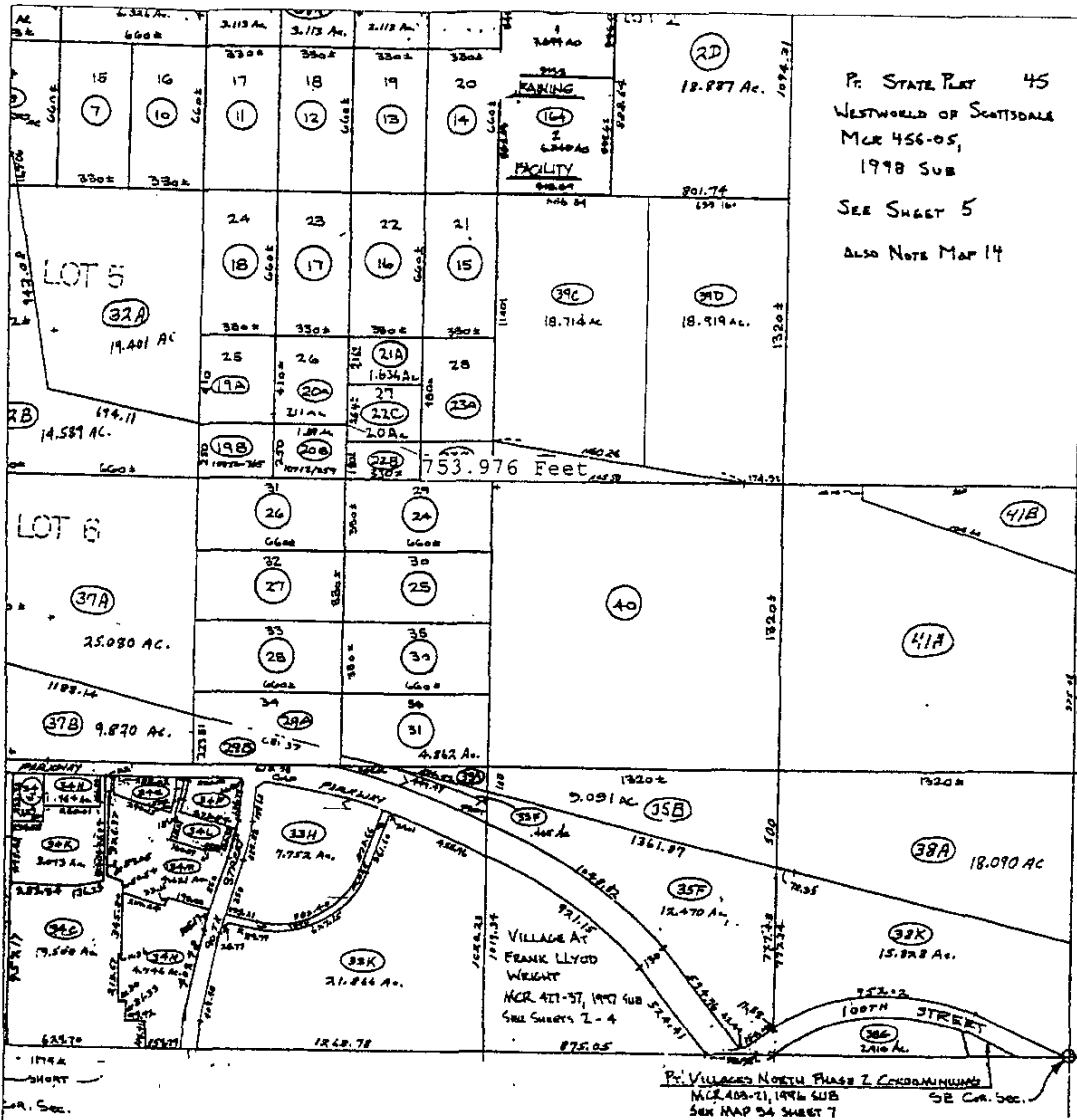
Very truly yours,

WITHEY ANDERSON & MORRIS P.L.C.

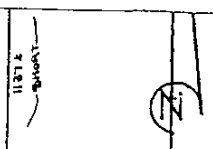
By

  
Greg Linaman





P. STATE PLAT 45  
 WESTWORLD OF SCOTTSDALE  
 MCR 456-05,  
 1998 SUB  
 SEE SHEET 5  
 ALSO NOTE MAP 14



SCALE: 1"=500'

13	12	11	10	9	8	7	6	5	4	3	2	1
19	18	17	16	15	14	13	12	11	10	9	8	7
5	33.99	34.79	35.48	36.17	36.86	37.55	38.24	38.93	39.62	40.31	41.00	41.69
6	33.99	34.79	35.48	36.17	36.86	37.55	38.24	38.93	39.62	40.31	41.00	41.69
7	33.99	34.79	35.48	36.17	36.86	37.55	38.24	38.93	39.62	40.31	41.00	41.69
8	33.99	34.79	35.48	36.17	36.86	37.55	38.24	38.93	39.62	40.31	41.00	41.69

G.L.D. LOTS TO SEC. 6

LOT	ACRES
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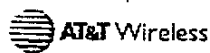


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When	Event	Where
8-2-2002 12:15 PM	<u>First Fridays - Free Admission -- Informal Music Programs and More</u>	The Cathedral Center for the Arts
8-3-2002 8:00 AM	<u>Osborn School District Registration Jamboree</u>	Solano Elementary School
8-5-2002 7:00 PM	<u>Board of Directors Meeting</u>	Pool Area
8-5-2002 7:00 PM	<u>ASHOA I&amp;II Monthly Board Meeting</u>	Arizona HOA Management Office
8-6-2002 7:00 PM	<u>Board of Directors Meeting</u>	Pool Area
8-7-2002 Time Undetermined	<u>WHAT IS CPR AND WHY SHOULD I LEARN IT?!</u>	CPR Classes @ Washington Adult Center
8-7-2002 6:30 PM	<u>Planning Meeting</u>	CLUBHOUSE
8-8-2002 11:00 AM	<u>Neighbor Meeting Regarding Rezoning Application</u>	Southeast Corner of Bell Road and 91st Street (rear building)
8-8-2002 3:30 PM	<u>Alliance monthly meeting</u>	Yucca Branch Library
8-8-2002 7:00 PM	<u>Board of Directors Meeting</u>	Deer Valley Center, Room 4
8-9-2002 Time Undetermined	<u>Tombstone Vigilante Days</u>	Tombstone

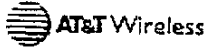
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## Community Calendar

### Neighbor Meeting Regarding Rezoning Application

**When:** 8-8-2002, 11:00 AM

**Where:** Southeast Corner of Bell Road and 91st Street (rear building)

**Contact:** Withey Anderson & Morris (602) 230-0600

Withey Anderson & Morris has filed a rezoning application for the property located at the southwest corner of Bahia (formerly Aire Libre) Lane and 91st Street. The current zoning is Residential. Ownership seeks a change to I-1 to permit development of the property with build-to-suit industrial-use buildings, which would be consistent with the Scottsdale General Plan and with other development in the area. Withey Anderson & Morris has also applied for a Use Permit to allow one of the users at the development to install automobile accessories on site. The installations would be performed indoors and on a very limited basis. Additional neighbor meetings will be held on Thursday, August 8 at 1:30 P.M., and on Friday, August 9 at 9:00. You are invited to attend the meetings to ask any questions or to provide any input you may have. You are also welcome to contact Greg Linaman of Withey Anderson & Morris directly to discuss the applications.

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[Horseman's East Forty Calendar](#)

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*OK All  
Cavalyer*

## Early Notification of Project Under Construction

Site Address: Southwest corner of 91st St.  
and Aire Libre Lane, Scottsdale, Az

- Project Overview:** McDowell Mountain Business Center  
Built-to-suit industrial use buildings
- **Existing Zoning:** — R1-35
  - **Proposed Zoning:** I-1
  - **Additional Request:** Use permit for the installation of automobile accessories
  - **Acreage:** Approximately 14
  - **Applicant Contact:** Mike Withey/ Greg Linaman  
Withey Anderson & Morris, PLC  
602-230-0600

**Pre-Application Case Number:** 208 PA 02

**Case File Available at City of Scottsdale  
480-312-7000**

You are invited to attend any of three meetings we have scheduled to discuss this project. They will be held on Thursday, August 8th at 11:00a.m. and 1:30p.m. and Friday, August 9th at 9:00a.m. at the southeast corner of 91st street and Bell Road (rear building).



**CHAIRMAN GULINO** stated he heard on the radio that there was a live band there on opening night. He inquired if that was a special event. Mr. Verschuren replied the Applicant pulled a special event permit for that event and went through the proper channels to obtain a permit.

7. 24-UP-2002 (Elite Fitness) request by Elite Fitness, applicant, Richard Rodger, owner, for a conditional use permit for a health studio on a .83 +/- acre parcel located at 7120 E Indian School Road with Central Business District (C-2) zoning.

**MS. GUNDERMAN** presented this case as per the project coordination packet. Staff recommends approval subject to the attached stipulations.

**COMMISSIONER STEINBERG** inquired if the second floor would be used for large groups such as yoga and if so is there sufficient parking. Ms. Gunderman replied the use permit is for the first and second floor. The second floor would be used for office space and some activity like yoga. She stated there is sufficient parking for this facility.

- 8. 18-ZN-2002 (McDowell Mountain Business Center) request by Archicon LC, applicant, General's Partners #11, owner, to rezone from Single Family Residential, Planned Commercial District (R1-35 PCD) to Industrial Park, Planned Commercial District (I-1 PCD) on a 14 +/- acre parcel located at the southeast corner of 90th Street & Bahia Drive.

**MR. WARD** presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

→ **COMMISSIONER OSTERMAN MOVED TO FORWARD CASES 21-UP-2002 AND 24-UP-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL INDICATING IT DOES CONFORM TO THE USE PERMIT CRITERIA. HE ALSO MOVED TO FORWARD CASE 18-ZN-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSION HEITEL.**

**THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).**

#### **REGULAR AGENDA**

- 9. 20-UP-2002 (McDowell Mountain Business Center) request by Archicon LC, applicant, General's Partners #11, owner, for a conditional use permit for automotive and boat assembly and reassembly, excluding general repairs and maintenance on a 1 +/- acre parcel located at the southwest corner of 91st Street and Bahia Drive.

**MR. WARD** presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

**COMMISSIONER NELSEN** stated the report does not reference the type of work that would be done on boats. He inquired if there would be any mechanical work done on this site. Mr. Ward replied that there would not be any mechanical work done on this site it will be installation of automobile accessories only. He stated there would not be any work done on boats. The reason boats was included was because it fell under the same category as automobile accessory installation.

**COMMISSIONER NELSEN** stated the report indicates that all work would be done indoors. He further stated if the two bay doors are open, there could be an issue with noise if they are installing a loud stereo system. He inquired how staff has addressed that issue. Mr. Ward stated installing a loud stereo system with the bay doors open is a possibility, however, that would be a violation of the use permit and if there was a complaint it would be handled by Code Enforcement. He remarked these are reputable mechanics and he believed they would be quite concerned about not blasting a stereo that may be heard several hundred feet away at adjacent properties.

→ **COMMISSIONER OSTERMAN MOVED TO FORWARD CASE 20-UP-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL INDICATING IT DOES MEET THE USE PERMIT CRITERIA. SECOND BY COMMISSIONER HEITEL.**

**THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).**

10. 20-UP-1994#2 (McDowell Mountain Ranch Park & Aquatic Center) request by City of Scottsdale, applicant/owner, to approve a revised Municipal Use Master Site Plan for 40+/- acres located at the southeast corner of Thompson Peak Parkway and McDowell Mountain Ranch Road.

**MS. WAUWIE** presented this case as per the project coordination packet. Staff recommends approval of Option B, subject to the attached stipulations.

**BILL EXHAM**, General Manager, Community Services, gave a broad overview from a parks and recreational planning perspective for this facility. Mr. Exham provided information on the background and history of this request. He reported the Parks and Recreation Commission recommended to the City Council approval of Option B.

**PHIL WEDDLE**, Weddle Gilmore Architects, stated the original master plan for the site was the starting point for the City and the design team as they started the public input process. He discussed some the issues they saw with the original master plan and how through the community input process the design has evolved. He discussed the intersection improvements. He provided an overview on the design services. He also provided an overview of Option A and Option B. He concluded as they move forward with this design

ORDINANCE NO. 3483

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SCOTTSDALE MARICOPA COUNTY, ARIZONA, AMENDING ORDINANCE NO. 455, THE ZONING ORDINANCE OF THE CITY OF SCOTTSDALE, BY AND FOR THE PURPOSE OF CHANGING THE ZONING ON THE "DISTRICT MAP" TO ZONING APPROVED IN CASE NO. 18-ZN-2002, TO REZONE THE PROPERTY FROM R1-35 PCD (SINGLE FAMILY RESIDENTIAL, PLANNED COMMUNITY DISTRICT), TO I-1 PCD (INDUSTRIAL PARK, PLANNED COMMUNITY DISTRICT), ON PROPERTY LOCATED AT THE SOUTHEAST CORNER OF 90<sup>TH</sup> STREET AND BAHIA DRIVE.

WHEREAS, Case No. 18-ZN-2002 has been properly noticed for City Council consideration, pursuant to the requirements of the Zoning Ordinance of the City of Scottsdale and the statutes of the State of Arizona, and the necessary citizen participation process and hearings have been completed; and

WHEREAS, the Council of the City of Scottsdale wishes to amend the comprehensive zoning map of the City of Scottsdale for this Property;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Scottsdale, as follows:

Section 1. That the "District Map" adopted as a part of the Zoning Ordinance of the City of Scottsdale and showing the zoning district boundaries, is amended by rezoning the Property as shown on the map attached as Exhibit 2 and incorporated herein by reference, from R1-35 PCD (Single Family Residential, Planned Community District), to I-1 PCD (Industrial Park, Planned Community District), on property located at the southeast corner of 90<sup>th</sup> Street and Bahia Drive.

Section 2. That the above rezoning is conditioned upon compliance with all stipulations attached hereto as Exhibit 1 and incorporated herein by reference.

PASSED AND ADOPTED by the Council of the City of Scottsdale this \_\_\_\_ day of January, 2003.

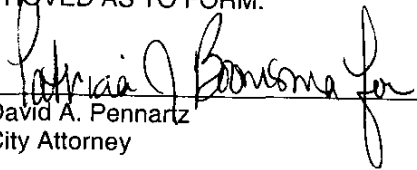
ATTEST:

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Sonia Robertson  
City Clerk

By: \_\_\_\_\_  
Mary Manross  
Mayor

APPROVED AS TO FORM:

By:  \_\_\_\_\_  
David A. Pennartz  
City Attorney

Attachment #10



## STIPULATIONS FOR CASES 18-ZN-2002 AND 20-UP-2002

Note; the following stipulations apply to both the zoning and use permit cases unless otherwise specified to apply to only one of the cases.

### PLANNING/ DEVELOPMENT

1. **CONFORMANCE TO DEVELOPMENT SUBMITTAL.** Development shall conform to the site plans submitted by Archicon, L.C. and dated 25 October 2002. These stipulations take precedence over the above-referenced site plan. Any proposed significant change, as determined by the Zoning Administrator, shall be subject to subsequent public hearings before the Planning Commission and City Council.
2. **DEVELOPMENT CONTINGENCIES.** The approved development program, including intensity, may be changed due to drainage issues, topography, and other site planning concerns which will need to be resolved at the time of site plan approval. Appropriate design solutions to these constraints may preclude achievement of the proposed development program.

### DRAINAGE MASTER PLAN

1. **MASTER DRAINAGE REPORT.** With the Development Review Board submittal, the developer shall submit a master drainage report and plan for the entire site, subject to city staff approval. The master drainage report and plan shall conform to the Design Standards and Policies Manual - Drainage Report Preparation. In addition, the master drainage report and plan shall:
  - a. Include a complete description of requirements relating to project phasing.
  - b. Identify the timing of and parties responsible for construction of all storm water management facilities.
2. **MASTER DRAINAGE REPORT COPIES.** Before master drainage report approval by the Drainage Planning Department, the developer shall, when requested by city staff, submit two (2) hard copies and one (1) disc copy of the complete master drainage report.
3. **MASTER DRAINAGE REPORT APPROVAL.** Before the improvement plan submittal to the Project Quality/Compliance Division, the developer shall have obtained approval of the master drainage report.

### CIRCULATION

1. **IMPROVEMENT DISTRICT.** Any application within the area designated within the Planned Community District, west of the 94<sup>th</sup> Street alignment, shall conform to all the requirements (monetary and physical improvements) of the Bell Road II Improvement District, Contract Number 2000-168-COS, for the City of Scottsdale.
2. **ACCESS RESTRICTIONS.** Access to the site shall conform to the following restrictions (distances measured to the driveway or street centerlines):
  - a. *The site driveways on 91<sup>st</sup> Street shall be designed in general conformance with city of Scottsdale Type CL-1, Standard Detail #2256, as determined by city staff.*
  - b. *Before Final Plans approval, the developer shall dedicate a one-foot wide vehicular non-access easement on 91<sup>st</sup> street and Bahia Road, except at approved driveway locations.*
  - c. *Driveways on 91<sup>st</sup> street and 90<sup>th</sup> street shall be located with a minimum of 165 feet between adjacent driveways and street intersections.*

3. **PEDESTRIAN CIRCULATION PLAN.** With the Development Review Board submittal, the developer shall submit a Pedestrian Circulation Plan for the site, which shall be subject to city staff approval. This plan shall indicate the location and width of all sidewalks and pedestrian pathways.
4. **OLD VERDE CANAL PROTECTION PLAN AND TRAIL DEDICATION.** With the Development Review Board submittal, the developer shall submit a protection plan and 25 ft. wide trail dedication for the Old Verde Canal in conformance with the PCD and MEDCP, which shall be subject to city staff approval.
5. **PRIVATE STREET CONSTRUCTION.** All private streets shall be constructed to full public street standards, except equivalent construction materials or wider cross-sections may be approved by city staff. In addition, all private streets shall conform to the following requirements:
  - a. No internal private streets shall be incorporated into the city's public street system at a future date unless they are constructed, inspected, maintained and approved in conformance with the city's public street standards. Before any lot is sold, the developer shall record a notice satisfactory to city staff indicating that the private streets shall not be maintained by the city.
  - b. Before issuance of any certificate of occupancy for the site, the developer shall post access points to private streets to identify that vehicles are entering a private street system.
  - c. Secured access shall be provided on private streets only. The developer shall locate security gates a minimum of 75 feet from the back of curb to the intersecting street. The developer shall provide a vehicular turn-around between the public street and the security gate.

#### DRAINAGE AND FLOOD CONTROL

1. **CONCEPTUAL DRAINAGE REPORT.** With the Development Review Board submittal, the developer shall submit a conceptual drainage report and plan subject to city staff approval. The conceptual report and plan shall conform to the Drainage Master Plan (required above) and Design Standards and Policies Manual - Drainage Report Preparation. In addition, the conceptual drainage report and plan shall:
  - a. Identify all major wash corridors entering and exiting the site, and calculate the peak discharge (100-yr, 6-hr storm event) for a pre- versus post-development discharge comparison of ALL washes which exit the property.
  - b. Determine easement dimensions necessary to accommodate design discharges.
  - c. Demonstrate how the storm water storage requirement is satisfied, indicating the location, volume and drainage area of all storage.
  - d. Include flood zone information to establish the basis for determining finish floor elevations in conformance with the Scottsdale Revised Code.
  - e. Include a complete description of requirements relating to project phasing.
2. **FINAL DRAINAGE REPORT.** With the improvement plan submittal to the Project Quality/Compliance Division, the developer shall submit a final drainage report and plan subject to city staff approval. The final drainage report and plan shall conform to the Design Standards and Policies Manual - Drainage Report and Preparation. In addition, the final drainage report and plan shall:
  - a. Demonstrate consistency with the approved master drainage plan and report.: Bell Road II Improvement District prepared by Gannett Fleming (GF Job No. 38406), approved by the City of Scottsdale on August 6, 2001, for the Contract No. 2000-168-COS.

- b. With respect to the to the above,
    - (1) Any design that modifies the approved master drainage report requires from the developer a site-specific addendum to the final drainage report and plan, subject to review and approval by the city staff.
    - (2) Addendum generated by the final drainage analysis for this site shall be added to the appendix of the final drainage report.
  - c. Provide final calculations and detailed analysis that demonstrate consistency with the accepted conceptual drainage plan and report.
4. Underground stormwater storage: The properties/areas north of the Old Verde Canal, shall not be allowed to store stormwater underground. The area has good positive slope throughout the site. Before Final Plans submittal, the developer shall prepare their site plan to maximize the above ground storage capacity available on the site, subject to city staff approval.

Before scheduling for DRB approval, the developer shall have obtained a storm water storage waiver(s), subject to city staff approval, that meet the following criteria:

- a). Properties\areas north of the Old Verde Canal berm, must obtain a Stormwater Storage Waiver and must provide stormwater storage (onsite) to the extent that post-development stormwater flows do not exceed pre-development flows.
- b). Properties/areas south of the Old Verde Canal berm, must obtain a Stormwater Storage Waiver, but do not have to store any stormwater on site.

With the Development Review Board submittal, the developer shall address the following items in the drainage report. Delineate and label the drainage sub areas and show all grade breaks on the G&D plan. Using a tabular format summarize the following: Calculate the volume required and volume provided in each drainage sub area. Show which specific drainage sub areas flow into a specific detention basin.

- 5. STORM WATER STORAGE EASEMENTS. With the Development Review Board submittal, the developer shall submit a site plan subject to city staff approval. The site plan shall include and identify tracts with easements dedicated for the purposes of storm water storage, in conformance with the Scottsdale Revised Code and the Design Standards and Policies Manual.
- 6. DRAINAGE EASEMENTS. Before the issuance of any building permit for the site, the developer shall dedicate to the city, in conformance with the Scottsdale Revised Code and the Design Standards and Policies Manual, all drainage easements necessary to serve the site.

#### VERIFICATION OF COMPLIANCE

- 1. REQUIRED SPECIAL INSPECTIONS. Before the approval of the improvement plans, the Project Quality/Compliance Division staff shall specify those drainage facilities that shall be required to have Special Inspections. See Section 2-109 of the Design Standards and Policies Manual for more information on this process.
- 2. CONDITION FOR ISSUANCE OF GRADING & DRAINAGE PERMIT. Before the issuance of a Grading & Drainage Permit:
  - a. The developer shall certify to the Project Quality/Compliance Division, that it has retained an Inspecting Engineer by completing Part I (Project Information) and Part II (Owner's Notification

- of Special Inspection) of the Certificate of Special Inspection of Drainage Facilities (CSIDF); and,
- b. The Inspecting Engineer shall seal, sign and date Part III (Certificate of Responsibility) of the CSIDF.
3. **CONDITION FOR ISSUANCE OF CERTIFICATE OF OCCUPANCY AND/OR LETTER OF ACCEPTANCE.** Before the issuance of a Certificate of Occupancy and/or a Letter of Acceptance, the following requirements shall be met to the satisfaction of city staff:
- a. The Inspecting Engineer shall seal, sign and date the Certificate of Compliance form.
- b. The developer shall submit all required Special Inspection Checklists and the completed Certificate of Compliance form to the Inspection Services Division. The Certificate of Compliance form shall be sealed, signed and dated by the Inspecting Engineer, and shall be attached to all required Special Inspection Checklists completed by the Inspecting Engineer.
4. **AS-BUILT PLANS.** City staff may at any time request the developer to submit As-built plans to the Inspection Services Division. As-built plans shall be certified in writing by a registered professional civil engineer, using as-built data from a registered land surveyor, and submitted within 30 days of city staff's request. As-built plans for drainage facilities and structures shall include, but are not limited to, streets, lot grading, storm drain pipe, valley gutters, curb and gutter, flood walls, culverts, inlet and outlet structures, dams, berms, lined and unlined open channels, storm water storage basins and underground storm water storage tanks, bridges as determined by city staff.

#### WATER and WASTEWATER

1. Community District, west of the 94<sup>th</sup> Street alignment, shall conform to all the requirements (monetary and physical improvements) of the Bell Road II Improvement District, Contract Number 2000-168-COS, for the City of Scottsdale.

#### OTHER REQUIREMENTS

1. **ENVIRONMENTAL PROTECTION AGENCY (EPA) REQUIREMENTS.** All construction activities that disturb five or more acres, or less than five acres if the site is a part of a greater common plan, shall obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Construction Activities. [NOI forms are available in the City of Scottsdale One Stop Shop, 7447 East Indian School Road, Suite 100. Contact Region 9 of the U.S. Environmental Protection Agency at 415-744-1500, and the Arizona Department of Environmental Quality at 602-207-4574 or at web site <http://www.epa.gov/region>.]
- The developer shall:
- a. Submit a completed Notice of Intent (NOI) to the EPA.
- b. Submit a completed Storm Water Pollution Prevention Plan (SWPPP) to the EPA.
2. **NOTICE OF INTENT (NOI).** With the improvement plan submittal to the Project Quality/Compliance Division, the developer shall submit a copy of the NOI.
3. **SECTION 404 PERMITS.** With the improvement plan submittal to the Project Quality/Compliance Division, the developer's engineer must certify that it complies with, or is exempt from, Section 404 of the Clean Water Act of the United States. [Section 404 regulates the discharge of dredged or

fill material into a wetland, lake, (including dry lakes), river, stream (including intermittent streams, ephemeral washes, and arroyos), or other waters of the United States.]

4. **DUST CONTROL PERMITS.** Before commencing grading on sites 1/10 acre or larger, the developer shall have obtained a Dust Control Permit (earth moving equipment permit) from Maricopa County Division of Air Pollution Control. Call the county 602-507-6727 for fees and application information.
5. **UTILITY CONFLICT COORDINATION.** With the improvement plan submittal to the Project Quality/Compliance Division, the developer shall submit a signed No Conflict form (not required for city owned utilities) from every affected utility company.
6. **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY REQUIREMENTS (ADEQ).** The developer shall be responsible for conformance with ADEQ regulations and requirements for submittals, approvals, and notifications. The developer shall demonstrate compliance with Engineering Bulletin #10 Guidelines for the Construction of Water Systems, and Engineering Bulletin #11 Minimum Requirements for Design, Submission of Plans, and Specifications of Sewerage Works, published by the ADEQ. In addition:
  - a. Before approval of final improvement plans by the Project Quality/Compliance Division, the developer shall submit a cover sheet for the final improvement plans with a completed signature and date of approval from the Maricopa County Environmental Services Department (MCESD).
  - b. Before issuance of encroachment permits by city staff, the developer shall provide evidence to city staff that a Certificate of Approval to Construct Water and/or Wastewater Systems has been submitted to the MCESD. This evidence shall be on a document developed and date stamped by the MCESD staff.
  - c. Before commencing construction, the developer shall submit evidence to city staff that Notification of Starting Construction has been submitted to the MCESD. This evidence shall be on a document developed and date stamped by the MCESD staff.
  - d. Before acceptance of improvements by the city Inspection Services Division, the developer shall submit a Certificate of Approval of Construction signed by the MCESD and a copy of the As-Built drawings.
  - e. Before issuance of Letters of Acceptance by the city Inspection Services Division, the developer shall:
    - (1) Provide to the MCESD, As-Built drawings for the water and/or sanitary sewer lines and all related facilities, subject to approval by the MCESD staff, and to city staff, a copy of the approved As-Built drawings and/or a Certification of As-Built, as issued by the MCESD.
    - (2) Provide to the MCESD a copy of the Engineers Certificate of Completion with all test results, analysis results, and calculations, as indicated on the form.
    - (3) Provide to the MCESD a copy of the Request for Certificate of Approval of Construction of water and/or sanitary sewer lines with all appropriate quantities.
    - (4) Provide the city Inspection Services Division a copy of the Certificate of Approval of Construction, as issued by the MCESD.

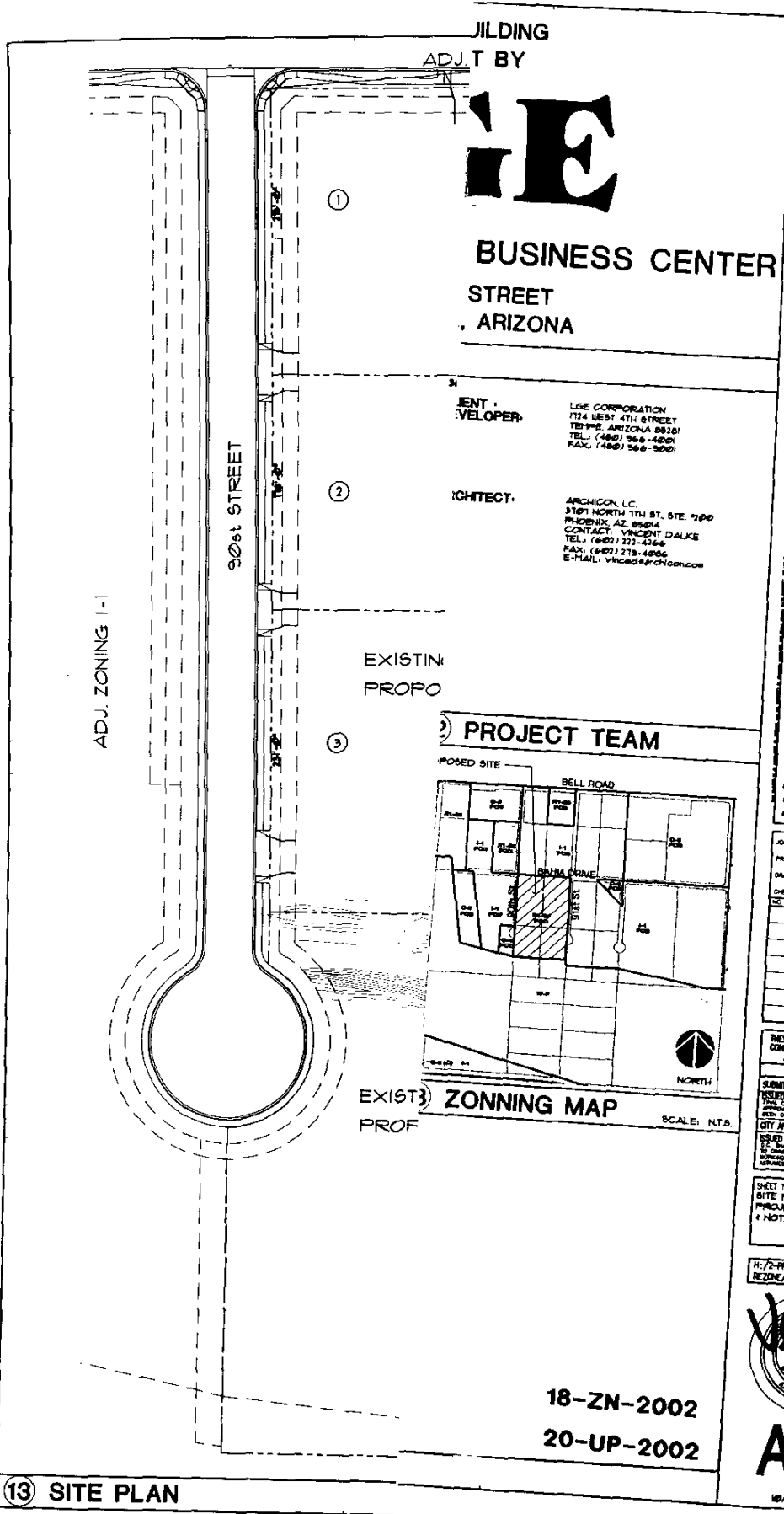
#### USE PERMIT REQUIREMENTS

1. No maintenance or repair of vehicles is permitted on the site.
  2. All installation of automotive related equipment authorized by this use permit shall be conducted completely within the building.
-









BUILDING  
ADJ. T BY

**THE**

**BUSINESS CENTER**  
STREET  
ARIZONA

CLIENT DEVELOPER:

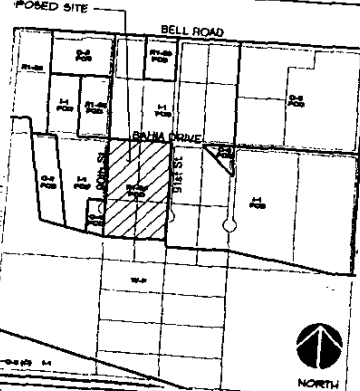
LGE CORPORATION  
1724 WEST 4TH STREET  
TEMPE, ARIZONA 85281  
TEL: (480) 368-4000  
FAX: (480) 368-3600

ARCHITECT:

ARCHICON, L.C.  
31671 NORTH 174 ST. STE. 100  
PHOENIX, AZ 85044  
CONTACT: VINCENT DALKE  
TEL: (602) 222-4264  
FAX: (602) 222-4006  
E-MAIL: vinced@archicon.com

EXISTING  
PROPOSED

**PROJECT TEAM**



**ZONING MAP**

SCALE: N.T.S.

**ARCHICON, L.C.**  
Architecture & Interiors  
3701 N. 7th STREET, SUITE 200  
PHOENIX, ARIZONA 85018  
(602) 222-4006  
FAX: (602) 222-4006  
WWW.ARCHICON.COM

**MCDOWELL MOUNTAIN BUSINESS CENTER**  
SEC OF 90th ST. AND BAHIA DRIVE  
SCOTTSDALE, ARIZONA

**LGE**  
DESIGN BUILD

JOB NO:	02550011
PROJECT WORK ELEMENT MOD:	
DRAWN BY:	RAJESH GORRE
CHECKED BY:	VINCE DALKE
NO.	000001
DATE	

THESE DRAWINGS ARE NOT FOR CONSTRUCTION UNTIL ALL IDEAS ARE DETAILED AND DATED	INITIAL	DATE
SUBMITTED TO CITY		
ISSUED FOR RECORD		
FOR CONSTRUCTION		
CITY APPROVAL		
ISSUED FOR CONST.		
FOR CONSTRUCTION		
FOR CONSTRUCTION		
FOR CONSTRUCTION		

SHEET TITLE  
SITE PLAN  
PROJECT DATA  
& NOTES

H: 2-PROJ/1-1-02-0550011  
REZONE/NO. 0

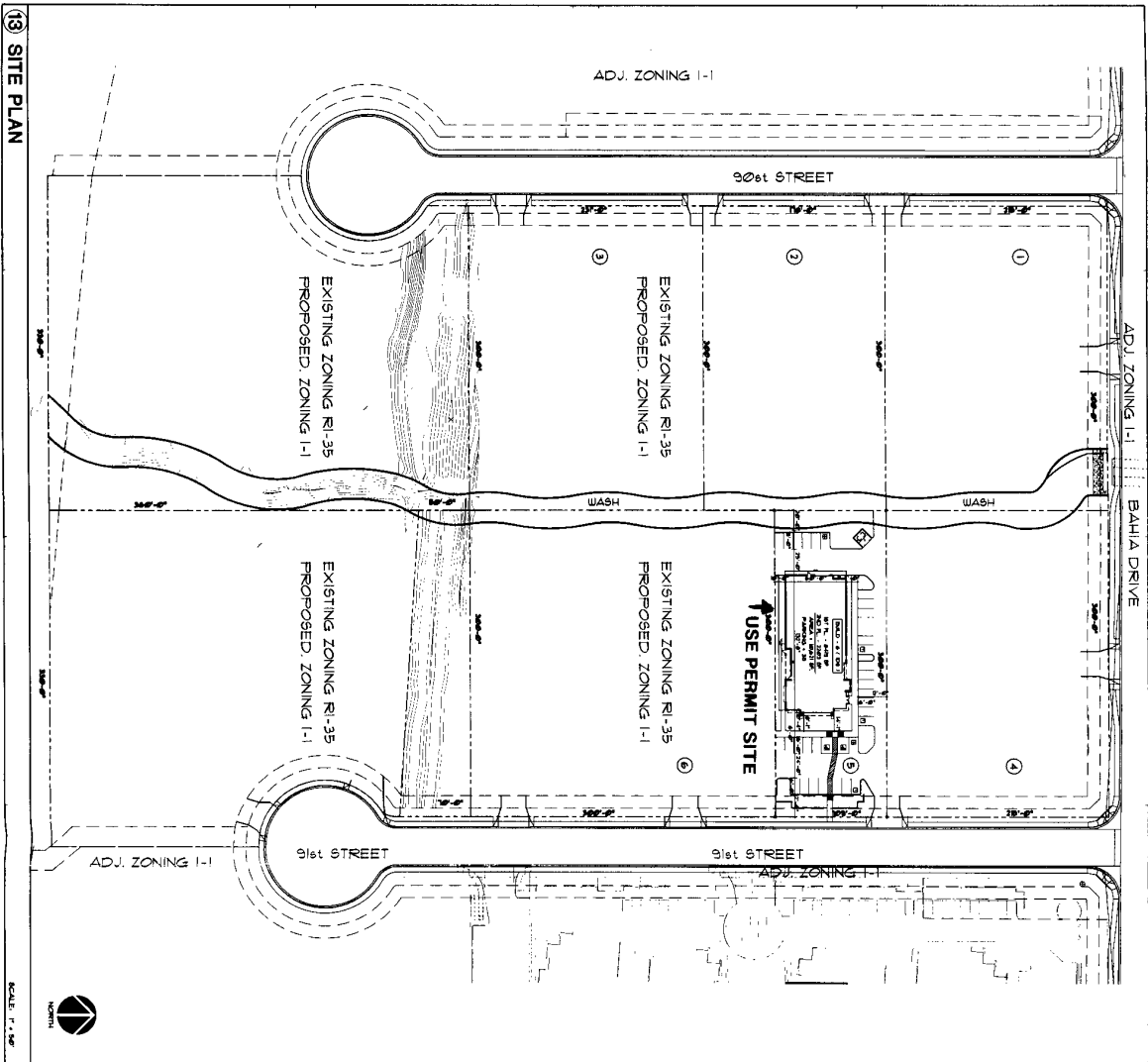


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10/25/02

18-ZN-2002  
20-UP-2002

**13 SITE PLAN**



**A NEW BUILDING  
PROJECT BY**

# LGE

**MCDOWELL MOUNTAIN BUSINESS CENTER**  
90TH & 91ST STREET  
SCOTTSDALE, ARIZONA

<b>PROJECT</b> ADDRESS: 90TH & 91ST STREET DEVELOPER: LGE SCOPE: 100,000 SQ. FT. EXISTING ZONING: RI-35 PROPOSED ZONING: I-1 SITE NET AREA: 4.25 ACRES SITE GROSS AREA: 18.75 ACRES	<b>CLIENT DEVELOPER</b> LGE CORPORATION 1700 N. 10TH STREET SCOTTSDALE, AZ 85257 TEL: (480) 344-4000 FAX: (480) 344-5000
<b>ARCHITECT</b> ARCHICON, L.L.C. 3300 N. 7TH STREET, SUITE 200 PHOENIX, AZ 85014 TEL: (602) 277-1000 FAX: (602) 277-1000 E-MAIL: info@archicon.com	

**23 PROJECT DATA**

**17 VICINITY MAP** SCALE: N.T.S.

**12 PROJECT TEAM**

**18 ZONING MAP** SCALE: N.T.S.

**MCDOWELL MOUNTAIN BUSINESS CENTER**  
SEC OF 90TH ST. AND BAHIA DRIVE  
SCOTTSDALE, ARIZONA

**ARCHICON, L.L.C.**  
Architecture & Interiors  
3300 N. 7TH STREET, SUITE 200  
PHOENIX, ARIZONA 85014  
PHONE: (602) 277-1000  
FAX: (602) 277-1000  
WWW.ARCHICON.COM

**LGE**  
DESIGN BUILD

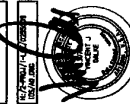
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**ARCHICON, L.C.**  
Architecture & Interiors  
3007 W. 7th Street, Suite 200  
Phoenix, Arizona 85014  
(602) 222-4264  
FAX (602) 279-4096  
www.archicon.com

I.D.S.  
LOT #23, SWC OF 91st ST. & BAHIA DR.  
SCOTTSDALE, ARIZONA

[illegible]

SHEET NO. 1



A

**20-UP-2002**

**ATTACHMENT #12**

A NEW BUILDING  
PROJECT BY

**LGE**

I.D.S.

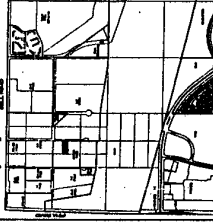
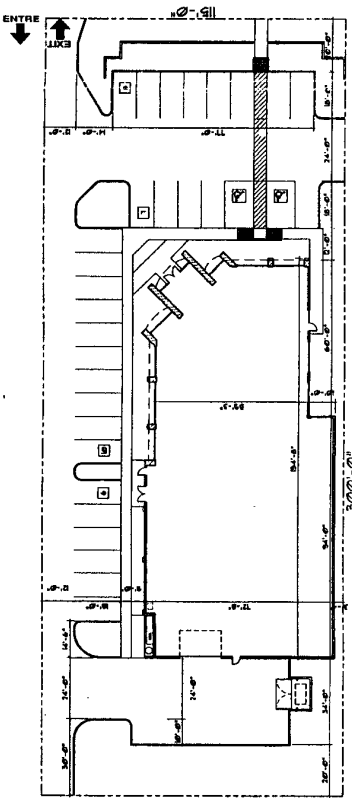
LOT #23, SWC OF 91ST ST. & BAHIA  
SCOTTSDALE, ARIZONA

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REQUIRED PARKING			
OFFICE	4716 / 300	= 8.75	
STORAGE	22046 / 800	= 2.76	
SERVICE	3864.2 / 500	= 19.32	
			+ 28
			+ 31
PARKING PROVIDED ON SITE			
ACCESSIBILITY PARKING	TOTAL REQUIRED	2	
	PROVIDED ON SITE	2	
BIKE PARKING	TOTAL REQUIRED	4	
	PROVIDED ON SITE	4	

17 PROJECT DATA

# 18 LOCATION MAP



13 SITE PLAN

**17 PROJECT DATA**

LOCATION MAP

**CLIENT DEVELOPER:** LGE CORPORATION  
104 WEST 4TH STREET  
TULSA, ARIZONA 86326  
TEL: (480) 964-4000  
FAX: (480) 964-9000

**ARCHITECT:** AMCON, L.C.  
3107 NORTH 1TH ST., STE. 900  
PHOENIX, AZ 85014  
CONTACT: VINCENT DALICE  
TEL: (602) 221-2156  
FAX: (602) 279-4696

**22 PROJECT TEAM**

**208-PA-2002**

**20-UP-2002**

**ATTACHMENT #12**

# City Council Report



MEETING DATE: January 7, 2003

ITEM NO. 8 GOAL: Coordinate Planning to Balance Infrastructure

## SUBJECT

### Fox Sports Grill Restaurant/Bar Conditional Use Permit

## REQUEST

Request to approve a conditional use permit for live entertainment in a 19,600+/- square foot building located at 16203 N Scottsdale Road (Promenade Building One) with Planned Regional Center (PRC) zoning.

**21-UP-2002**

### Key Items for Consideration:

- The restaurant/bar is located within an existing commercial center, approximately 3,600 feet southwest of the nearest residential development.
- Live entertainment will be contained within the restaurant/bar and all external doors are required to remain closed.
- Planning Commission recommends approval, 6-0.

### Related Policies, References:

51-ZN-97, 51-ZN-97#2, 51-ZN-97#3,  
51-ZN-97#4, 82-DR-98#3,  
82-DR-98#3A

## OWNER

Pederson Group Inc  
602-265-2888

## APPLICANT CONTACT

H. Lewkowitz  
HJ Lewkowitz  
602-280-1000

## LOCATION

16203 N Scottsdale Rd

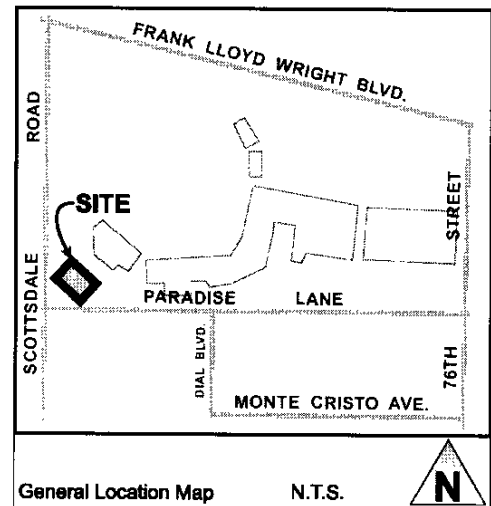
## BACKGROUND

### Zoning.

The site is zoned Planned Regional Center (PRC). The current zoning district allows Live Entertainment with an approved Conditional Use Permit. The property has been zoned Planned Regional Center (PRC) since 1997.

### Context.

The existing restaurant/bar is located in a commercial center (The Promenade) northwest of the Airport. The restaurant/bar is surrounded by commercial activities on the north, west, and south sides. There is a parcel zoned General Commercial District (C-4) to the south of the site which is the Crackerjack Center. The closest residence is approximately 3,600 feet to the northeast (Scottsdale Princess Area). The restaurant/bar, located within an existing shopping center (The Promenade), orients toward Paradise Lane to the south, Scottsdale Rd. to the west, and Frank Lloyd Wright Blvd. to the north. The site has access from Paradise Lane, Scottsdale Road, and Frank Lloyd Wright Blvd.



**APPLICANT'S  
PROPOSAL**

**Goal/Purpose of Request.**

The applicant requests a conditional use permit for indoor live entertainment at the existing restaurant/bar. The Live Entertainment will consist primarily of bands (4 to 5 member acoustic and/or amplified instruments), a Disc Jockey booth, "live sports broadcasts" (Fox Sports Net field reporters) and seasonal ticketed events (Super Bowl VIP Night). The live entertainment will not take place in the dining area or patio areas, only the bar areas of the building. The Promenade Master Parking Plan has been updated showing all required parking accommodated at the shopping center. The parking will be located on the north and east side of the existing building.

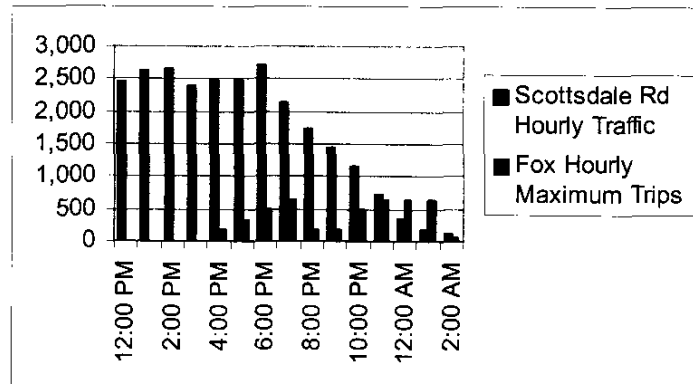
**IMPACT ANALYSIS**

**Traffic.**

The purpose of the PRC district is to provide for a broad variety of general merchandise and services, including office and residential uses interrelated by design to assure that the uses compliment each other. Live Entertainment is envisioned as a use within the PRC. Along with this proposal, there is one other live entertainment operation in the Promenade Center (Red Fish) which is located over one third of a mile away off Frank Lloyd Wright Boulevard.

Fox Sports Grill is proposing live entertainment in a building of 16,900 gross square feet, equating to a maximum occupancy of 800 persons. That figure is used to determine the peak loading for live entertainment parking and traffic review. Based on a vehicular occupancy of 2.5 persons per vehicle, 320 vehicles would arrive at the site during a capacity peak time. Assuming a one-hour stay on site, 320 vehicles equate to 640 trips per peak hour, i.e. a vehicle entering the site is one trip and exiting the site is the second trip.

The capacity peak time is expected to be at 7 pm and again between 11 pm through 1 am. Estimated hourly percentages of the peak utilization for Fox Sports Grill were obtained from similar past city traffic studies of live entertainment. The main street adjacent to Fox Sports Grill is Scottsdale Road. When the Fox Sports Grill live entertainment traffic volumes are at its capacity peak times, Scottsdale Road traffic volumes are at lower volumes, as shown in the chart below.



It should be noted that some of the Fox Sports Grill trips will be to the east (through the Promenade Center), not to Scottsdale Road. There is full left turn access from this corner of the shopping center to both Scottsdale Road and Paradise Lane. The proposed use will be compatible with the operation of

Scottsdale Road and other surrounding streets. It will not have a negative impact on the surrounding areas resulting from an unusual volume or character of traffic.

**Parking.**

Fox Sports Grill will have a maximum occupancy of 800 people. Based on an automobile occupancy of 2.5 persons per vehicle, this project will require 320 parking spaces to fulfill the required parking for Live Entertainment. The applicant has updated the Promenade Center Master Parking Plan. Based on updated uses, including live entertainment for the Fox Sports Grill, the highest parking demand is expected to occur on Saturdays between 2:00pm and 3:00 pm. The parking demand during this time is estimated to be 2,892 needed parking spaces, which is below the 3,304 parking spaces provided. The Fox Sports Grill live entertainment does not affect the peak parking demand because the peak hours for live entertainment occur between 7:00 pm and 1 am.

**Development information.**

- *Existing Use:* Restaurant/bar
- *Buildings/Description:* Stand-alone building located on a pad within a commercial center
- *Parcel Size:* 86 acres (commercial center-Promenade)
- *Building Height Allowed:* 60 feet
- *Existing Building Height:* 32 feet
- *Floor Area:* +/- 19,600 sq. ft.

**Community involvement.**

The applicant has notified all of the tenants in the Promenade Center of the proposed Live Entertainment. Staff has received no comments at the time this report was drafted.

**Community Impact/Use Permit Criteria.**

Conditional use permits, which may be revocable, conditional, or valid for a specified time period, may be granted only when expressly permitted only after the Planning Commission has made a recommendation and the City Council has found as follows:

- A. That the granting of such conditional use permit will not be materially detrimental to the public health, safety or welfare. In reaching this conclusion, the Planning Commission and the City Council's consideration shall include, but not be limited to, the following factors:
  1. Damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination.
    - **All live entertainment activity will occur in the interior of the restaurant during normal business hours with the doors closed. There are no plans to have live entertainment in the dining area or in the outdoor patio areas. The existing lighting on the site will remain with no additional lights proposed. There will be no impact to surrounding neighbors due to noise,**

**vibration, or illumination.**

2. Impact on surrounding areas resulting from an unusual volume or character of traffic.
    - **Live entertainment activity is expected to peak in the late evening, at a time when traffic volumes on adjacent streets are significantly less than daytime peak levels. There is adequate capacity on the adjacent streets to accommodate the traffic volumes generated by the proposed use during peak activity times.**
  3. No other factors associated with this project will be materially detrimental to the public.
    - **No other factors have been identified.**
- B. The characteristics of the proposed conditional use are reasonably compatible with the types of uses permitted in the surrounding areas.
- **The live entertainment is associated with the existing restaurant/bar and is compatible with the other commercial uses and restaurant/bars in the shopping center. The restaurant/bar entrance and patio areas are oriented toward Scottsdale Rd.**
- C. The additional conditions specified in Section 1.403, as applicable, have been satisfied.
1. The site plan shall demonstrate that:
    - i. Buffering by a wall and/or landscaping will be provided in a manner which physically separates and restricts access from the establishment and it's required parking area to residential districts.
      - **The closest residential area (the Princess Resort) is located approximately 3,600 feet northeast, across Frank Lloyd Wright Blvd. and the Central Arizona Project Canal, from the project.**
    - ii. All patron entrances will be well lit and clearly visible to patrons from the parking lot or a public street.
      - **The building entrance and the parking lot are clearly visible with existing lighting and signage.**
  2. The applicant has provided written evidence that all sound resulting from business activities will be contained within the building, except where external speakers are permitted.
    - **External speakers are permitted on the patio areas. The stipulations ensure excessive noise does not impact the surrounding commercial uses.**
  3. The applicant has provided a written public safety plan that the city police and fire departments have approved as complying with the written guidelines of the Planning and Development Department.
    - **The Scottsdale Police Department and Rural/Metro Fire Department have reviewed and approved the submitted Public Safety Plan associated with the live entertainment use.**
  4. The applicant has provided a written lighting plan which addresses exterior lighting on and surrounding the property, in accordance with section 7.600 of the zoning ordinance and with the public safety plan

guidelines.

- **The site is appropriately lit, and no change to the existing lighting for the commercial center and restaurant is proposed.**
5. The applicant shall provide a written exterior refuse control plan which must be approved by the Planning and Development Department staff as complying with the written guidelines of the department, prior to the issuance of a business license. The review will be conducted as provided in Section 1.305.
    - **Refuse will be contained by two existing enclosed dumpsters located at the southeast corner of the restaurant/bar. The applicant will clean debris surrounding the restaurant/bar.**
  6. The applicant has provided a floor plan that identifies the areas for the primary use and for ancillary functions, which include but are not limited to patron dancing areas and/or stages for performances.
    - **Live Entertainment will only occur in the bar areas located at the northwest portion of the building.**
  7. If access to the establishment is from a street other than one classified by the General Plan as minor collector or greater, or classified by the downtown General Plan as local street or greater, the applicant has provided a traffic analysis which complies with transportation planning department written guidelines. The plan shall demonstrate to the satisfaction of the transportation department that the level of service on all streets accessed by the use shall meet the standard set by the city.
    - **Traffic will utilize Scottsdale Road, Paradise Lane, and Frank Lloyd Wright Blvd. to access the shopping center and the restaurant site. A trip generation review of the use indicates that the proposal conforms with street design and traffic volume capacity for the area.**
  8. If the Zoning Administrator determines that a study is necessary the applicant shall provide a parking study that complies with the written guidelines of the Planning and Development Department.
    - **The applicant has updated the Promenade Master Parking Plan. The anticipated peak demand will be accommodated within the existing parking lot provided at the center.**
  9. The applicant has provided any additional information required by city staff in order to evaluate the impacts of the proposed use upon the area.
    - **No other impacts are anticipated.**
  10. The following operational standards must be met by the use throughout its operation:
    - i. All external doors shall be closed but not locked during business hours.
    - ii. No external speakers will be permitted on the premises of a use permitted under this section, which is located within five hundred (500) feet of a residential district.
    - ii. The applicant/operator shall comply with all plans approved as provided herein.
      - **The use conforms and has been stipulated to conform to these standards.**

**Policy Implications.**

The application meets the conditional use permit criteria pertaining to live entertainment. Approval of the application will allow live entertainment within the existing restaurant/bar which is over 3,600 feet from the nearest residential area and compatible with the surrounding developments.

**RECOMMENDED  
APPROACH****Staff and Planning Commission Recommended Approach:**

Approve the live entertainment use permit application, subject to the attached stipulations.

**Planning Commission:**

The Planning Commission heard this case on November 13, 2002. No one from the public spoke at the hearing. One Planning Commissioner heard on the radio that the grand opening featured a live band and asked if that was true. The applicant was issued a Special Events Permit, which allowed the live band, and the associated live entertainment. There was no other discussion. The Planning Commission found that the proposal meets the live entertainment use permit criteria and recommended approval, subject to the attached stipulations.

Planning Commission recommends approval, 6-0.


**RESPONSIBLE  
DEPT(S)**

**Planning and Development Services Department**  
Current Planning Services

**STAFF CONTACT(S)**

Bill Verschuren  
Senior Planner  
480-312-7734  
E-mail: [bverschuren@ci.scottsdale.az.us](mailto:bverschuren@ci.scottsdale.az.us)

**APPROVED BY**

  
\_\_\_\_\_  
Kroy Ekblaw  
Planning and Development Services General Manager

12  
12/12/02  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Ed Gawf  
Deputy City Manager

12/13/02  
\_\_\_\_\_  
Date

**ATTACHMENTS**

1. Applicant's Narrative
2. Context Aerial
- 2A. Aerial Close-Up
3. Land Use Map
4. Zoning Map
5. Stipulations
6. Traffic Impact Summary
7. Citizen Involvement
8. November 13, 2002 Planning Commission Minutes
9. Public Safety Plan
10. Floor Plan
11. Site Plan



## **PROJECT NARRATIVE**

Fox Sports Grill is a Full Service Restaurant/Bar (includes: Dining, Bar and Patio areas). This request is to allow indoor live entertainment for patrons of the Bar Area only. Live Entertainment is strictly to enhance the atmosphere and experience of the Bar Area guests. Live entertainment consists primarily of:

- Bands of musicians
- Occasional "live broadcasts" (Fox Sports Net)
- Seasonal ticketed events (ie: Super Bowl VIP Night)

The live entertainment will not increase our maximum occupancy, and all sound created from such entertainment will be contained entirely within our premises. (See attached Floor Plan for proposed location of band and/or Live Broadcasts)

Bands or musicians will consist of 4-5 members with acoustic and/or amplified instruments. Music Style will be "Adult Contemporary" and "R&B". Live Broadcast events will mainly consist of a single "Field Reporter" and tech crew taping segments for Broadcast on Fox Sports Net.

Entertainment will also consist of multiple television monitors, airing sports related programming. These television monitors are limited to the bar and patio areas.

We have no plans to have live entertainment in the Dining Area or Patio Area.





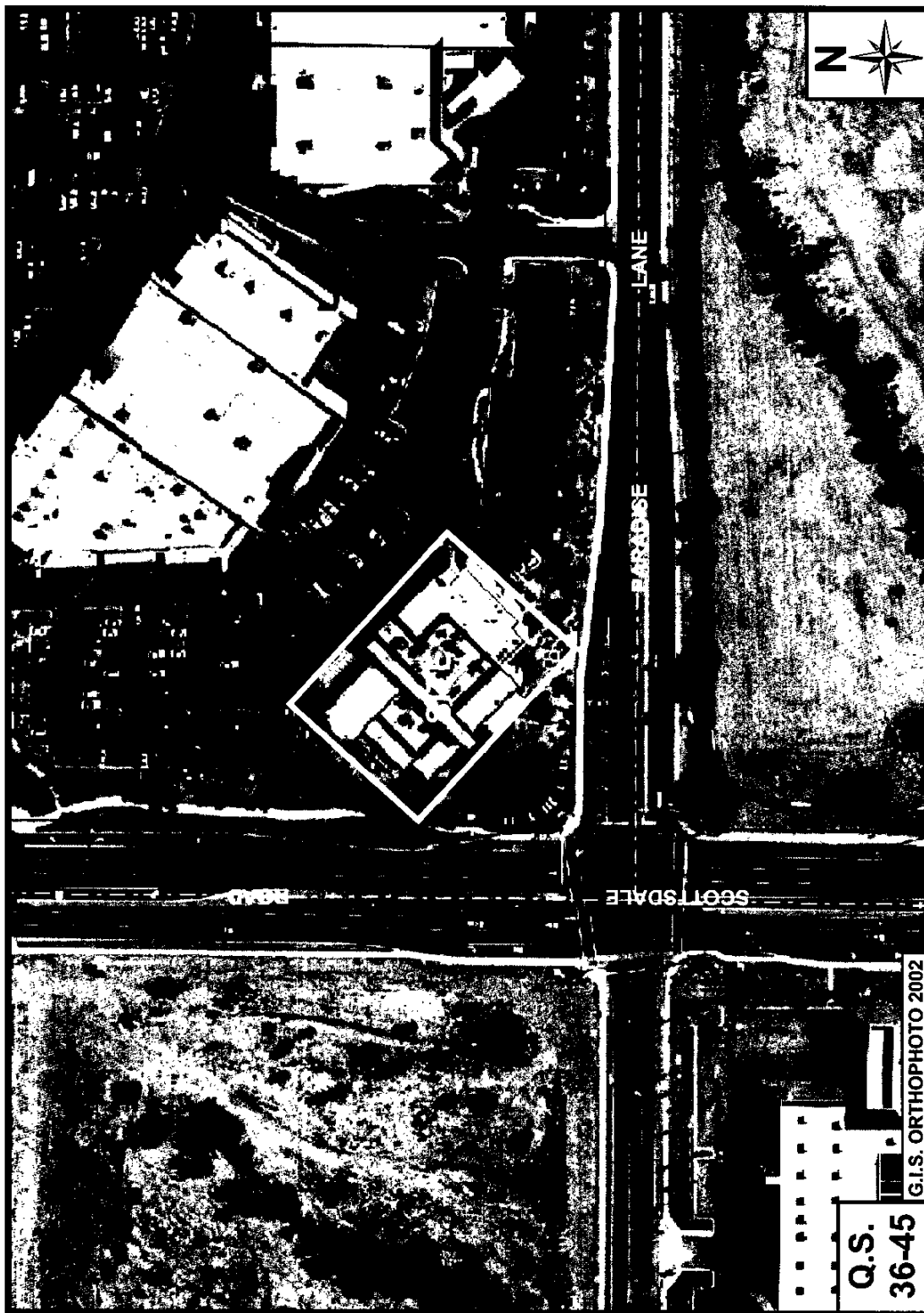
Q.S.  
36-45

G.I.S. ORTHOPHOTO 2002

Fox Sports Grill

21-UP-2002

ATTACHMENT #2



Q.S.  
36-45

G.I.S. ORTHOPHOTO 2002

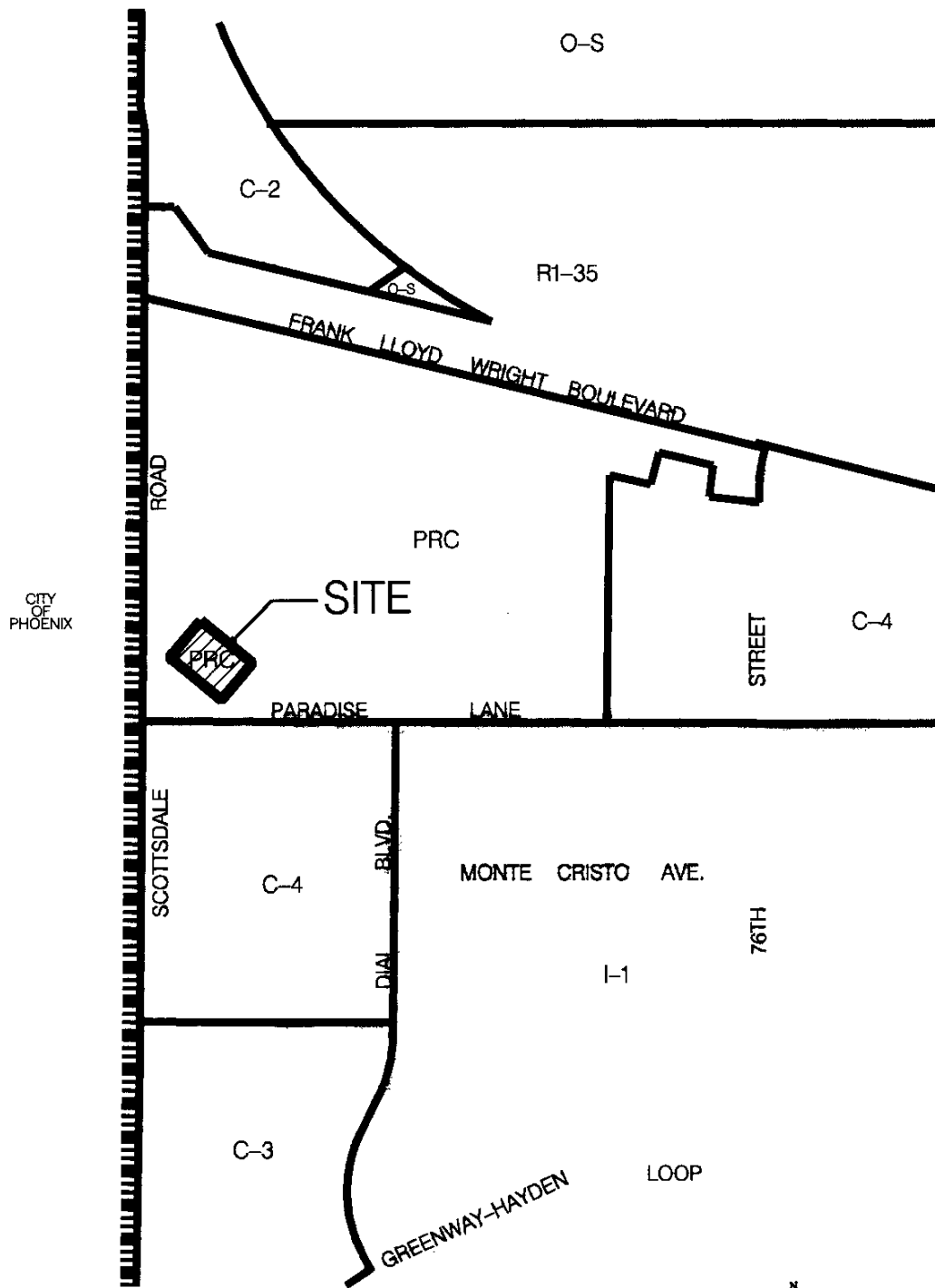
Fox Sports Grill

21-UP-2002

ATTACHMENT #2A



**21-UP-2002**  
**ATTACHMENT #3**



21-UP-2002

ATTACHMENT #4





**STIPULATIONS FOR CASE 21-UP-2002**  
**Bold stipulations added after the Planning Commission Hearing**

PLANNING/ DEVELOPMENT

- 1 **PARKING.** In the event that the parking program is not performing adequately, operating in a manner hazardous to the public or operating in a manner that causes a nuisance to neighboring properties, as determined by the Zoning Administrator, the business shall provide a revised parking study and parking program to the City, to the satisfaction of the Zoning Administrator, within 30 days of the request by the City.
- 2 **OPERATIONS.** All operations and live entertainment on site shall comply with the following:
  - a. All amplified live entertainment, live entertainment that would create noise, vibration, dust, smoke and visual nuisances, shall be conducted and contained completely within the suite/building and all external doors shall remain closed.
  - b. Live entertainment shall not be audible from any point on any residential lot in the surrounding area.
  - c. There shall be no live entertainment between the hours of 1:00 a.m. and 8:00 a.m.
  - d. The security plan as approved by the Scottsdale Police Department.
  - e. **All external speakers shall not emit any of the Live Entertainment that is provided within the building.**
- 3 **REFUSE PLAN.** The business owner shall comply with the approved refuse control plan, to the satisfaction of City Staff. The business owner shall assure that litter and debris removal shall take place every day within two (2) hours after normal business hours.



## **TRAFFIC IMPACT STUDY**

Fox Sports Grill  
21-up-2002  
Scottsdale & Paradise  
10/16/02

### **Traffic**

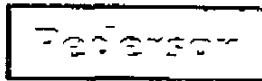
The property was zoned Planned Regional Center (PRC) 1997. The purpose of the PRC district is to provide for a broad variety of general merchandise and services, including office and residential uses interrelated by design to assure that the uses compliment each other. Live Entertainment is envisioned as a use within the PRC. Fox Sports Grill is located at the southwest corner of the 86-acre Promenade Shopping Center. Fox Sport Grill is at the northeast corner of Scottsdale Rd and Paradise Lane. There is one other live entertainment operation in the Promenade center located over one third of a mile away off Frank Lloyd Wright Boulevard.

Fox Sports Grill is proposing live entertainment in a structure of 16,900 gross square feet, equating to a maximum occupancy of 800 persons. That figure is used to determine the peak loading for live entertainment parking and traffic review. Based on a vehicular occupancy of 2.5 persons per vehicle, 320 vehicles would arrive at the site during a capacity peak time. Assuming a one-hour stay on site, 320 vehicles equate to 640 trips per peak hour, i.e. a vehicle entering the site is one trip and exiting the site is the second trip.

Live entertainment is expected to peak at 7 Pm and again at 11 PM through 1 AM. Estimated hourly percentages of the peak utilization for Fox Sports Grill were obtained from similar past city traffic studies of live entertainment. The main Street adjacent to Fox Sports Grill is Scottsdale Road. When the live entertainment load is peaking, is the time when peak traffic levels on Scottsdale Road are reduced from peak period. Scottsdale Road currently carries 36,000 vehicles per day, well under its design capacity of 55,000. Chart 1 and Table 1 contrast the hourly volume levels on Scottsdale Road with the estimated hourly Fox Sports Grill live entertainment trip production.

It should be noted that some of the Fox trips will be to the east, not to Scottsdale Road. There is full left turn access from this corner of the shopping center to both Scottsdale Rd and Paradise Lane. The proposed use will be compatible with the operation of Scottsdale Road and other streets.





October 21, 2002

**CITY OF SCOTTSDALE**  
7447 E. Indian School Road  
Scottsdale, Arizona 85251

**Re: Fox Sports Grill; Entertainment Permit  
The Promenade  
Scottsdale, Arizona**

To Whom It May Concern:

This letter will confirm that Fox Sports Grill has notified us with their intent to seek an Entertainment Permit for the operation of their facility at the southeast corner of Scottsdale Road and Frank Lloyd Wright Boulevard. I have in turn, as a representative of the Landlord, sent a memo to all the tenants located in The Promenade Shopping Center, notifying them of Fox Sports Grill's intent to seek an entertainment permit. As of this date, there has been no opposition to this request.

If you have any further questions regarding this matter, please do not hesitate to call.

Sincerely,

**PEDERSON/BVT PROMENADE ASSOCIATES,**  
an Arizona general partnership

By:

  
Jeff Manelis, Authorized Representative

SP2298.LTR  
P:\WINWORD\PROMENADE



**CONTINUANCES**

3. 65-ZN-1992#4 (Scottsdale Riverwalk Square) request by DFD Conoyer Hedrick, applicant, Pals Lands Inc, owner, for site plan approval on a 9+/- acre parcel located 4611 N Scottsdale Road with Downtown Regional Commercial Office, Type 2, Planned Block Development (D/RCO-2 PBD) zoning. Staff contact person is Kurt Jones, 480-312-2524. **CONTINUED TO NOVEMBER 20, 2002.**
4. 16-UP-1997#2 (Danny's Car Wash - Shea) request by Deutsch Associates, applicant, Pinnacle & Pima LLC, owner, to amend an existing use permit for a car wash on a 2.5+/- acre parcel located at 7373 E Shea Boulevard with Central Business District (C-2) zoning. Staff contact person is Bill Verschuren, 480-312-7734. **CONTINUED TO JANUARY 14, 2003.**
5. 17-UP-1997#2 (Danny's Car Wash - Shea) request by Deutsch Associates, applicant, Pinnacle & Pima LLC, owner, to amend an existing use permit for a service station on a 2.5+/- acre parcel located at 7373 E Shea Boulevard with Central Business District (C-2) zoning. Staff contact person is Bill Verschuren, 480-312-7734. **CONTINUED TO JANUARY 14, 2003.**


**VICE CHAIRMAN LOTZAR MOVED TO CONTINUE CASES 65-ZN-1992#4 TO THE NOVEMBER 20, 2002 PLANNING COMMISSION MEETING. CASES 16-UP-1997#2 AND 17-UP-1997#2 TO THE JANUARY 14, 2003 PLANNING COMMISSION MEETING. SECOND BY COMMISSIONER HEITEL.**

**THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).**

**EXPEDITED AGENDA**

**COMMISSIONER OSTERMAN MOVED TO MOVE CASE 18-ZN-2002 THE REGULAR AGENDA TO THE EXPEDITED AGENDA. SECOND BY VICE CHAIRMAN LOTZAR.**

**THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).**

- 
6. 21-UP-2002 (Fox Sport Grill) request by HJ Lewkowitz, applicant, Pederson Group Inc, owner, for a conditional use permit for live entertainment in a 19,600+/- square foot building located at 16203 N Scottsdale Road (Promenade Building One) with Planned Regional Center (PRC) zoning.

**MR. VERSCHUREN** presented this case as per the project coordination packet. Staff recommends approval subject to the attached stipulations.

**CHAIRMAN GULINO** stated he heard on the radio that there was a live band there on opening night. He inquired if that was a special event. Mr. Verschuren replied the Applicant pulled a special event permit for that event and went through the proper channels to obtain a permit.


7. 24-UP-2002 (Elite Fitness) request by Elite Fitness, applicant, Richard Rodger, owner, for a conditional use permit for a health studio on a .83 +/- acre parcel located at 7120 E Indian School Road with Central Business District (C-2) zoning.

**MS. GUNDERMAN** presented this case as per the project coordination packet. Staff recommends approval subject to the attached stipulations.

**COMMISSIONER STEINBERG** inquired if the second floor would be used for large groups such as yoga and if so is there sufficient parking. Ms. Gunderman replied the use permit is for the first and second floor. The second floor would be used for office space and some activity like yoga. She stated there is sufficient parking for this facility.

8. 18-ZN-2002 (McDowell Mountain Business Center) request by Archicon LC, applicant, General's Partners #11, owner, to rezone from Single Family Residential, Planned Commercial District (R1-35 PCD) to Industrial Park, Planned Commercial District (I-1 PCD) on a 14+/- acre parcel located at the southeast corner of 90th Street & Bahia Drive.

**MR. WARD** presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

 **COMMISSIONER OSTERMAN MOVED TO FORWARD CASES 21-UP-2002 AND 24-UP-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL INDICATING IT DOES CONFORM TO THE USE PERMIT CRITERIA. HE ALSO MOVED TO FORWARD CASE 18-ZN-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSION HEITEL.**

**THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).**

#### **REGULAR AGENDA**

9. 20-UP-2002 (McDowell Mountain Business Center) request by Archicon LC, applicant, General's Partners #11, owner, for a conditional use permit for automotive and boat assembly and reassembly, excluding general repairs and maintenance on a 1+/- acre parcel located at the southwest corner of 91st Street and Bahia Drive.

**MR. WARD** presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

## **SECURITY PLAN**

The guest experience at Fox Sports Grill is based on quality service and quality food. The emphasis on fine dining creates an atmosphere that is open, safe and secure. We do not encourage an atmosphere that will allow for unruly and inappropriate behavior. All conduct occurring within this facility will be according to the ordinances and laws of the City of Scottsdale and the State of Arizona.

The facility will be staffed with qualified employees during business hours. All staff will be fully trained on security policies and procedures. On site managers will be responsible to supervise and react to all security issues.

Security guards will be hired "as needed" for specific events and VIP's. These uniformed guards will be placed at the entrances to the facility and in the adjacent parking areas.

Brinks armored Services will be responsible for our daily cash pick-up.

All efforts will be made to provide an enjoyable and safe social experience. Fox Sports Grill is not a "nightclub"; we are an upscale dining and entertainment facility. And our goal is to maintain a unique, secure and exciting restaurant with appropriate security policies relative to this goal.

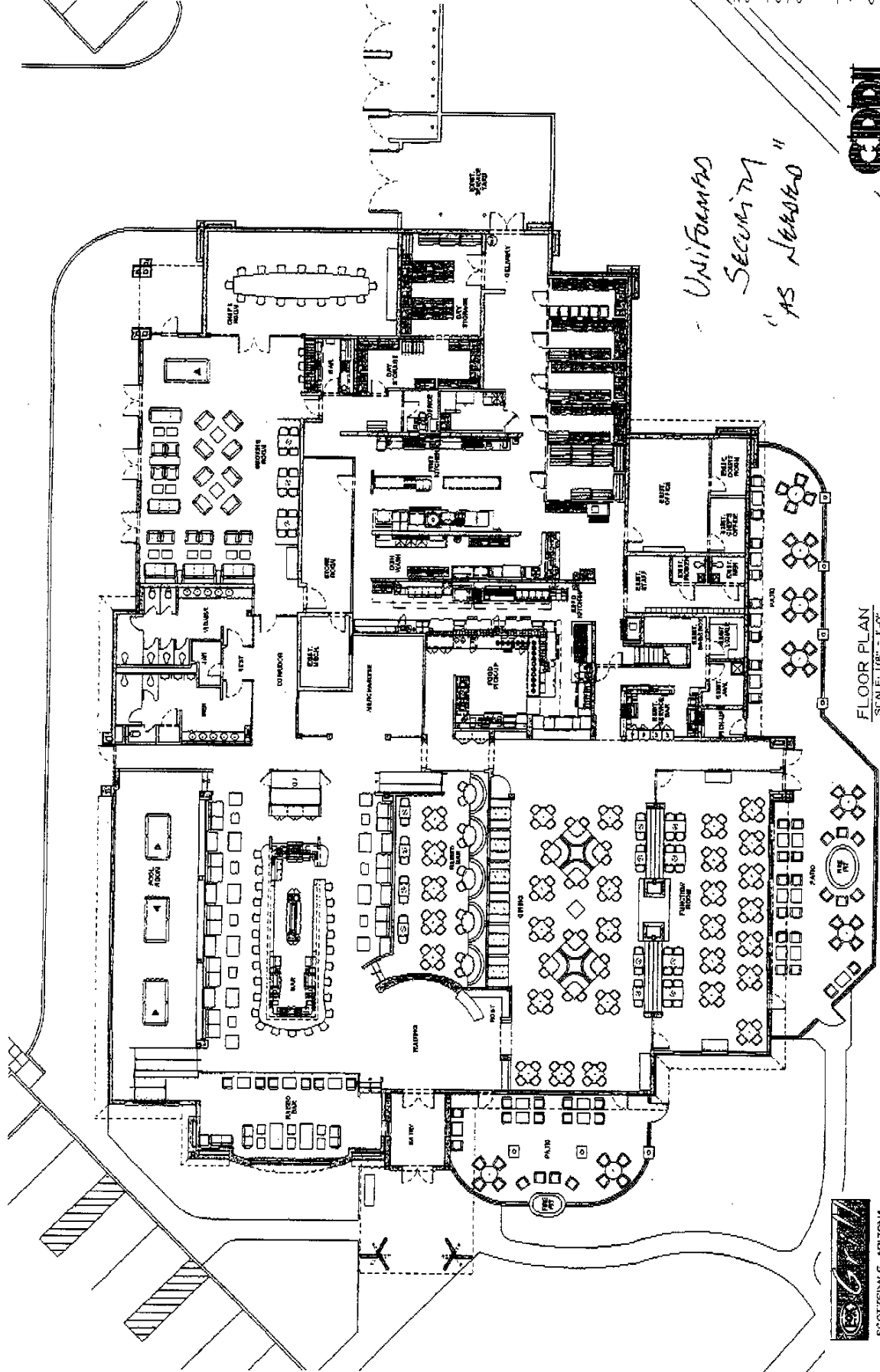
-SEE ATTCHED SITE PLAN







Uniforms  
Security  
"AS SEEN"



FLOOR PLAN  
SCALE: 1/8" = 1'-0"



**SECURITY PLAN**  
**For Live Entertainment Use Permits**



Scottsdale Police Department 9065 E. Via Linda Scottsdale, Arizona 85258  
(602) 312-5000 FAX: (602) 483-7438

Establishment:

Fox Sports Grill

Address:

16203 N. SCOTTSDALE ROAD

Business Phone:

480-368-0369

Business FAX:

480-368-0376

Maximum Occupancy:

641

Effective Date of Plan:

Date of Plan Review:

Use Permit Issue Date:

Liquor License Number:

12075232

Contact Person (1):

MICHAEL RICHTER

Home Phone:

602-254-5303

Contact Person (2):

JEFF GOUNIE

Home Phone:

714-305-9791



**I. PURPOSE OF THE PLAN**

This Plan addresses security measures for an establishment whose use shall require a Security Plan pursuant to Scottsdale Revised Code.

This Security Plan's purpose is to comply with the Security Plan conditions and/or requirements set forth in a Use Permit; to address the concerns of the zoning ordinance regarding: any significant increase in vehicular or pedestrian traffic, adequate control of disruptive behavior both inside and outside the premises, compatibility with surrounding structures and uses, any deterioration of the neighborhood or to the downgrading of property values; and to assist in providing an environment which may enhance safeguarding of property and public welfare and reduce the necessity for calls for service from law enforcement agencies.

This Security Plan, when approved by the City of Scottsdale, is granted to the establishment as set forth in Scottsdale City Code. A Security Plan may be required as a condition prior to the issuance of a Use Permit or City license. Deviations from or changes, modifications or alterations to the Plan shall not occur without prior written approval of the City of Scottsdale. **A copy of this Security Plan must be kept on the premises at all times and shall be made available upon request.**

**II. PLAN OF OPERATION, PROGRAM PLAN AND HOURS**

1. PERMITTEE: B & B RESTAURANT VENTURES, LLC  
(Business Name)

TYPE ORGANIZATION: Arizona Corporation Corporation  
Sole Proprietorship ☒ LLC Partnership Other

2. MANAGING AGENT(S):

Name: MICHAEL RICHTER

Title: GENERAL MANAGER

Address: 3247 N. 81ST STREET, PHOENIX, AZ 85277

Phone: 602-254-5303 (H) 480-368-0369 (W)

FAX or Other Numbers: 480-368-0376 (F)

3. BUSINESS OWNER(S) (if different than Managing Agent) Name,  
Address, Phone:

Name: BILL FREEMAN (CEO)

Address: 4195 E. THOUSAND OAKS BLVD, #101, WY, CA 91362

Phone: 805-497-2508 EX: 107 (W) 805-379-0272 (H)

FAX or Other Numbers: 805-497-6217 (F)

4. PROPERTY OWNER or PROPERTY MANAGER (if different from Managing Agent) Name, Address, Phone:

Name: *THE PEDERSON GROUP - JEFF MANELIS*  
 Address: *2800 N. CENTRAL AVE. 15TH FLOOR*  
*PHOENIX, CA 85004*  
 Phone: *(602) 265-2888 (w)*  
 FAX or Other Numbers: *(602) 265-2889 (F)*

5. HOURS OF OPERATION:

	<u>Open to Customers</u>	<u>Liquor Sale Ends</u>	<u>Closed to Customers</u>
Sunday	<i>10 AM - 1 AM</i>	<i>1 AM</i>	<i>1 AM - 10 AM</i>
Monday	<i>11 AM - 1 AM</i>	<i>1 AM</i>	<i>1 AM - 11 AM</i>
Tuesday	<i>11 AM - 1 AM</i>	<i>1 AM</i>	<i>1 AM - 11 AM</i>
Wednesday	<i>11 AM - 1 AM</i>	<i>1 AM</i>	<i>1 AM - 11 AM</i>
Thursday	<i>11 AM - 1 AM</i>	<i>1 AM</i>	<i>1 AM - 11 AM</i>
Friday	<i>11 AM - 1 AM</i>	<i>1 AM</i>	<i>1 AM - 11 AM</i>
Saturday	<i>11 AM - 1 AM</i>	<i>1 AM</i>	<i>1 AM - 11 AM</i>

6. PROMOTIONAL EVENTS (Ladies Night, Teen Nights, etc.):

*LADIES NIGHT D-BACKS NIGHT*  
*HAPPY HOUR SUNS NIGHT*

7. DESCRIPTION OF OPERATIONS/SERVICES (attach or describe):

Services Provided:

*FULL SERVICE RESTAURANT / BAR*

Target Audience/Patrons (age):

*21 TO 55*

Estimated Nightly Attendance:

*500*

Menu:

*SEE "MENU"*

Designated Driver Program:

*YES*

8. PROGRAM FORMAT, ENTERTAINMENT (attach or describe):  
 Program/entertainment format, advertising.

- a. Live entertainment and live music shall terminate no later than 12:55 a.m. or as approved in Use Permit.
- b. Music and amplified sound (interior and exterior) shall terminate at closing and is subject to City noise and other ordinances.

## 9. SPECIAL EVENTS:

- a. Notice must be given by Permittee to Scottsdale at the address above at least twenty (20) days prior to conducting Special Events on the premises. "Special Events" are any program formats varying from the regular format and audiences described or provided above organized or planned by Permittee. Scottsdale requires separate licenses for outdoor special events.
- b. Additional security or revisions to this Plan may be required by Scottsdale for Special Events (program formats varying from the regular format described above).
- c. Permittee must be separately licensed to conduct After Hours, Teen Nights, Outdoor Event/Special Events, Special Liquor License Events, Extensions of Premises, and separately approved Security Plans (or amendments to this Plan). See Scottsdale City Code for requirements.

## 10. COOPERATION/COMPLAINTS/CONCERNS:

- a. Permittee will maintain communications with establishments located on and adjacent to the premises, and with residents and other businesses who may be affected by patrons or operations of the Permittee. Permittee designates the following person to receive and respond to concerns or complaints from other residents or businesses:

Michael Richter - GM  
Name

- b. Permittee, managing agents, on-duty managers, supervisors and security personnel will cooperate closely with Scottsdale police, officers and neighbors in addressing and investigating complaints and concerns.
- c. Permittee's managing agent(s) shall meet with Scottsdale Police Department when requested by C.P.T.E.D. Officer or District Commander on matters related to this Plan.

### III. GENERAL SAFETY REQUIREMENTS

1. **Duration of Security Responsibilities**

The applicants responsibility for providing security to patrons, employees and the public extends to established parking areas as identified in the parking plan from one hour before opening to one hour after the end of business on any day of business operation. This commitment by the applicant is necessary to keep the parking areas free from loitering, other criminal activity and to prevent cruising through parking areas.

2. **Required Inspection of Facilities and Operation**

Prior to the first day of operation, the interior and exterior of the premises (including the parking area) will be inspected by a certified Crime Prevention Through Environmental Design (CPTED) Specialist from the Scottsdale Police Department. Such approval is required to insure that appropriate crime prevention measures are in place including sufficient lighting, video cameras if required and adherence to the existing security plan, etc. Any changes required by the CPTED Inspector must be instituted within 45 days of notice to Club Management.

3. **Reporting Acts of Violence and Disorderly Conduct**

a) **Incidents to be Reported Immediately**

Management or employees of the proposed establishment shall immediately notify the Scottsdale Police Department of any disturbances, acts of violence, acts of intimidation (as defined in ARS 13-1202) or incidents involving patrons in or on the Property or parking lots using illegal drugs. "Act of Violence" shall mean an incident consisting of a riot, a brawl or a disturbance, in which bodily injuries are sustained by any person and such injuries would be obvious to a reasonable person, or tumultuous conduct of sufficient intensity as to require intervention to restore normal order, or an incident in which a weapon is brandished, displayed or used.

b) **Written Reports**

All acts of violence as defined in the preceding paragraph occurring inside or outside the premises (including the parking areas) will be reported in writing to the Scottsdale Police Department no later than seventy-two (72) hours from occurrence.

c) **Log of Reportable Incidents**

The proposed establishment shall establish and maintain an accurate log of all reportable incidents. The log shall be available to the Community Development Director for inspection upon demand.

4. **Disorderly Patrons**

Disorderly patrons will be properly controlled and immediately escorted from the establishment using the minimum amount of force necessary. Employees of the establishment will take one of the following steps to maintain the safety of other employees, patrons and the person ejected:

- a) The disorderly patron will be escorted to his/her vehicle to leave only if he/she shows no apparent signs or symptoms of impairment by alcohol or drugs.
- b) The disorderly patron will be placed in a taxicab or the control of a responsible third party to insure that he/she leaves the area.
- c) The disorderly patron will be turned over to the custody and care of on-duty Scottsdale Police officers for disposition.

5. **Employees Access to Police and Fire Services**

Neither the Permittee, management of the proposed establishment nor other controlling persons shall prohibit employees or subcontracted labor from communicating a request for assistance to the police or fire departments during incidents where the employees or subcontracted labor reasonably perceive a threat to public safety.

6. **Cooperation during Police Investigations and Prosecution**

The Permittee, managers, employees and sub-contracted employees will reasonably cooperate with police investigations and subsequent prosecutions regarding arrests made on or relating to the premises resulting from a need to maintain the peace or public order, or resulting from a request by the establishments employees to investigate any potentially criminal act. In cases where an arresting officer acts on information received from an employee of the establishment, all involved employees will provide, to the Scottsdale Police Department, written statements detailing their observations and involvement.

7. **Incidents of Criminal Trespass**

During investigations and complaints of Criminal Trespass where the establishment is the victim, at least one employee of the establishment will act as arresting citizen with supporting documentation from the property owner authorizing such action and authority by the arresting citizen/employee.

8. **Occupancy Levels**

- a) The applicant will closely monitor occupancy levels with a clear understanding that fire department personnel will complete random checks.
- b) Patrons waiting for admission into the establishment will be required to remain in an orderly, designated line with access to restroom facilities or will be required to leave the area.

**9. On-site Security**

- a) Employees of the establishment (with the exception of off-duty, sworn police officers) shall not be armed with a deadly weapon while on or off the premises during hours of employment by the establishment.
- b) The owners and managers of the proposed establishment have a clear understanding that the Scottsdale Police Department will not provide off-duty officers for employment at the establishment.

**V. PATRON PARKING, INGRESS AND EGRESS, VEHICULAR AND PEDESTRIAN TRAFFIC CONTROL****1. PARKING**

- a) Parking Study completed and attached? ☒ YES ☐ NO

- b) Parking utilized by Patrons (# spaces, description, location):

190, PROMENADE MALL

- c) Parking utilized by Employees (# spaces, description, location):

35, PROMENADE MALL

- d) Any parking used by patrons or employees of the Permittee and any parking area of the Permittee shall be supervised by the Permittee to ensure that the parking areas are used by persons entering and exiting from their vehicles and are not used as a gathering place, for consumption of spirituous liquor, for violations of state or city law, acts of violence or disorderly conduct.

**2. PATRON INGRESS/EGRESS**

- a) Entrances to the premises will be continually monitored by Permittee for compliance with the maximum occupancy requirements for the premises.
- b) Patron identification shall be required and verified by Permittee prior to entry to ensure minors are not permitted on the premises when the primary use is spirituous liquor in violation of state law. Acceptable forms of identification and log verifying receipt of such identification shall conform with requirements of state law.
- c) Patrons awaiting entry shall not disrupt orderly flow of pedestrian or other traffic, block entrance to neighboring establishments or premises, or occupy greater width than two (2) persons abreast. Permittee shall request patrons violating this paragraph to leave and shall not allow admittance to such patrons.
- d) Parking areas will be monitored by Permittee from one hour (sixty minutes) before opening to one hour (sixty minutes) after closing.

- e. All patrons must have exited the premises and parking areas used by patrons within thirty (30) minutes after the designated closing time.

## VI. STAFFING AND OPERATIONS

### 1. OFFENSES AND POLICE CALLS FOR SERVICE

The Permittee agrees that it, its agents or employees will not commit or knowingly allow violations of Arizona State Law or Scottsdale City Ordinances to occur on the premises utilized by patrons of the Permittee.

Permittee will also inform patrons, through appropriate signage or other means, that acts and conduct prohibited by the following laws and ordinances are not allowed or tolerated by the Permittee on any premises or parking areas utilized by patrons of the Permittee; and that violators will be considered as trespassers by the Permittee, subject to criminal prosecution for trespass in addition to any offense charged.

- a. A.R.S. 4-101 et seq. through 4-261, as amended, Arizona Liquor Laws.
- b. A.R.S. 13-101 et seq. Arizona Criminal Code and A.R.S. 28-101 et seq. Arizona Motor Vehicle Code.
- c. Scottsdale City Code § 19-11.1.a, Curfew. This law sets a curfew for juveniles under the age of sixteen (16) at 10:00 p.m., and for juveniles age sixteen (16) and seventeen (17) at midnight. To comply with this law, Permittee agrees it will not allow any juveniles to remain at any location on its premises 1/2 hour prior to the curfew established in the code.

### 2. DEADLY WEAPONS

Permittee shall notify patrons that carrying of deadly weapons on the Permittee's premises and Permittee's parking areas is prohibited and request that weapons be removed as provided by A.R.S. 13-3102.

### 3. PERSONS UNDER TWENTY-ONE (21) YEARS OF AGE

The Permittee agrees that a person under twenty-one (21) years of age will not be allowed on the premises where liquor is sold, dispensed or consumed unless:

- a. The person is accompanied by a spouse, parent or legal guardian

who is at least twenty-one (21) years of age or is an on-duty employee of the Permittee; OR

- b. The primary purpose of the premises is serving food; OR
- c. The primary purpose of the premises is a patron participatory recreation activity limited to the minor's participation in any of the following sport activities: bowling, golf, football, basketball or sporting event.

#### 4. MANAGEMENT

Permittee agrees to provide a minimum number of managers (general and assistant) as indicated in the addendum hereto on the premises during hours when the Permittee is open for business. On duty managers are responsible for supervision of all employees, security personnel and agents, and shall identify all employees, personnel and agents on the premises when requested by Scottsdale.

#### 5. SECURITY PERSONNEL AND EMPLOYEES

- a. Permittee agrees to provide a minimum number of security personnel as indicated in the addendum hereto on the premises during hours when the Permittee is open for business or as otherwise indicated in the addendum hereto. **Security personnel shall primarily perform security functions and not serve as manager or in another capacity.**
- b. All employees managing or serving patrons, security personnel and agents of the Permittee shall be trained and knowledgeable about the contents of this Plan.
- c. Any personnel serving in security capacity on the premises (whether as employee or contractor) shall meet or exceed the requirements established by A.R.S. 32-2621 through A.R.S. 32-2636, as amended, relating to security personnel and guards, and any regulations issued pursuant thereto.

#### 6. SECURITY APPAREL AND EQUIPMENT

Security personnel shall display on their outer most clothing readily identifiable, and in contrasting colors, the words "Security" or "Security Personnel". Security shall be designated on the front of the clothing at least two (2) inches high, and on the back of the clothing at least four (4) inches high. Security uniforms shall not resemble Scottsdale law enforcement uniforms. Security uniforms shall be approved prior to use.

- a. All exterior security personnel shall have reflectorized vests with "SECURITY" displayed on both the front and back if the outer garment does not display "SECURITY".
- b. On-duty employees and agents shall wear clothing that readily identifies them as employees of the Permittee.
- c. Two-way radios will be provided by Permittee to all managers and exterior security personnel.

## VII. CONDITIONS OF PLAN

1. **COMPLIANCE WITH THE PLAN.** Successful execution and enforcement of this Plan may be a requirement and condition of Scottsdale's Use Permit. Termination, cancellation or non-approval of the Plan constitutes a breach of any condition requiring the existence of an approved Security Plan.
2. **TERMINATION OF PLAN.** This Plan may terminate on the date that the Permittee's Use Permit terminates, or two (2) years from the Security Plan's effective date, whichever date occurs first, unless otherwise provided herein.
3. **Violation, amendment, revocation, as defined in Scottsdale City Zoning Code Sec. 1.402.** Conditional use permits which have been approved by the City Council shall be subject to the following procedures and criteria regarding any violation, amendment, or revocation.
  - A. **Violation.** The violation of any condition imposed by the conditional use permit shall constitute a violation of this ordinance and shall be subject to the requirements of Section 1.1300.
  - B. **Amendment.** Conditional uses shall be developed in conformance to the approved plans as determined by the Zoning Administrator. An amendment to a conditional use permit is required before implementation of any material change in the scope and nature of an approved conditional use, material change in any conditions or stipulations to a conditional use permit or material change in the physical size, placement or structure of property subject to a conditional use permit. The Zoning Administrator shall have the discretion to determine if a proposed change warrants an amendment. An amendment must be approved as provided in Section 1.400 et seq. for the approval of conditional use permits.
4. **REVOCATION OF THE PLAN.** The Zoning Administrator may recommend to the Board of Adjustment and the board may effect revocation of a conditional use permit pursuant to Section 1.807 of the Scottsdale Zoning Code for acts including but not limited to:
  - A. A violation of the Plan
  - B. Violation of the conditions of the Use Permit

- C. Violation of Scottsdale ordinances or law
  - D. Repeated acts of violence or disorderly conduct as reflected by police calls for service or offenses occurring on premises utilized by patrons of the Permittee.
  - E. Failure of the Permittee to take reasonable steps to protect the safety of person(s) entering, leaving or remaining on the premises when the Permittee knew or should have known of the danger to such person, or the Permittee fails to take reasonable steps to intervene by notifying law enforcement officials or otherwise to prevent or break up an act of violence or an altercation occurring on the premises or on premises utilized by patrons and employees of the Permittee when the Permittee knew or reasonably should have known of such acts of violence or altercations.
  - F. Any enlargement or expansion of the premises, plan of operation or program format without appropriate approval from Scottsdale.
  - G. Misrepresentations or material misstatements of the Permittee, its agents or employees.
5. **ASSIGNMENT OR TRANSFER.** This Plan is not assignable or transferable to Permittee's successors or assigns. The Plan is automatically terminated upon sale or transfer of any interest in the Permittee.
6. **SECURITY PLAN CHANGES.** Any change in personnel identified in this Plan shall be reported to the Scottsdale Police Department within fourteen (14) calendar days after the change. Any change in the plan of operation or program shall be reported to Scottsdale Police Department at least fourteen (14) calendar days prior to the change taking place and is subject to approval by the District Commander and/or C.P.T.E.D. Office.
7. **MEETING REQUIREMENTS.** Management of Permittee shall arrange meetings with a representative of the Scottsdale Police Department regarding incidents of disorderly conduct, safety, I.D. verification and general security issues when deemed necessary by the District Commander and/or the C.P.T.E.D. Coordinator.
- a. A letter shall be forwarded by the manager, Permittee or its designee to the District Commander pertaining to the meeting date, topics of training, names of employees attending and the name of the presenter/officer(s).

8. A copy of this Security Plan must be kept on the premises at all times and shall be made available upon request.

APPLICANT:

Ryan Woodrow & Rapp, PLC  
Name: JERRY LEWKOWITZ  
Title: ATTORNEY  
Address: 3101 N. CENTRAL AVE #1500  
Phone: PHOENIX, AZ 85012  
602.280.1000  
Date: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
Scottsdale Police Department  
9065 E. Via Linda  
Scottsdale, AZ 85258  
(602) 391-5000  
(602) 483-7438 - FAX  
Date: \_\_\_\_\_

**ADDENDUM # 1****STAFFING FOR SECURITY PLAN**

For the purpose of developing and implementing the Security Plan for approval by the City of Scottsdale, Permittee hereby offers to maintain the following minimum staffing on the premises during the hours indicated during the effective term of this Plan.

**A. Operations**

1. There shall be a general manager on duty all hours while open for business and thirty (30) minutes after closing.
  - a. There shall be a general manager and one assistant manager on duty during peak nights (Friday and Saturday or when there are teen nights, promotional or special events).
2. A manager shall be identified as the "Security Manager" and be responsible for insuring that a safe environment exists, for the supervision of all security personnel and that all security personnel as identified here shall meet the requirements of Section V, paragraph 5 of their Security Plan.
3. Additional functions performed by management:
  - a. Monitor each entry door open for patrons.
  - b. Monitoring and patrolling exterior uses of the premises including the parking areas.

**B. Security Personnel (Minimum Staffing Requirements)**

1. Entry doors.
  - a. Present at each door open for entry to patrons until thirty (30) minutes after closing.
  - b. Cashier for each door open when there is a cover charge.
2. Off-Peak Nights (\_\_\_\_\_).
  - a. Foyer area roamer \_\_\_\_\_
  - b. Interior roamers \_\_\_\_\_

From opening to 10:00 p.m. \_\_\_\_\_  
From 10:00 p.m. to thirty (30) minutes \_\_\_\_\_

after closing \_\_\_\_\_

c. Exterior parking lots

From opening to 10:00 p.m. \_\_\_\_\_

From 10:00 p.m. to sixty (60) minutes  
after closing \_\_\_\_\_

3. Peak Nights (Friday and Saturday). The following staffing shall also apply to Sundays when the following Monday is a legal holiday, or when teen nights, promotional or special events are scheduled.

a. Foyer area roamer \_\_\_\_\_

b. Interior roamers

From opening to 10:00 p.m. \_\_\_\_\_

From 10:00 p.m. to thirty (30) minutes  
after closing \_\_\_\_\_

c. Exterior parking lots

From opening to 10:00 p.m. \_\_\_\_\_

From 10:00 p.m. to sixty (60) minutes  
after closing \_\_\_\_\_

Permittee shall provide a copy of their policy and procedures, training documentation and overall operational plan pertaining to security.

APPLICANT: \_\_\_\_\_

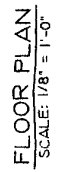
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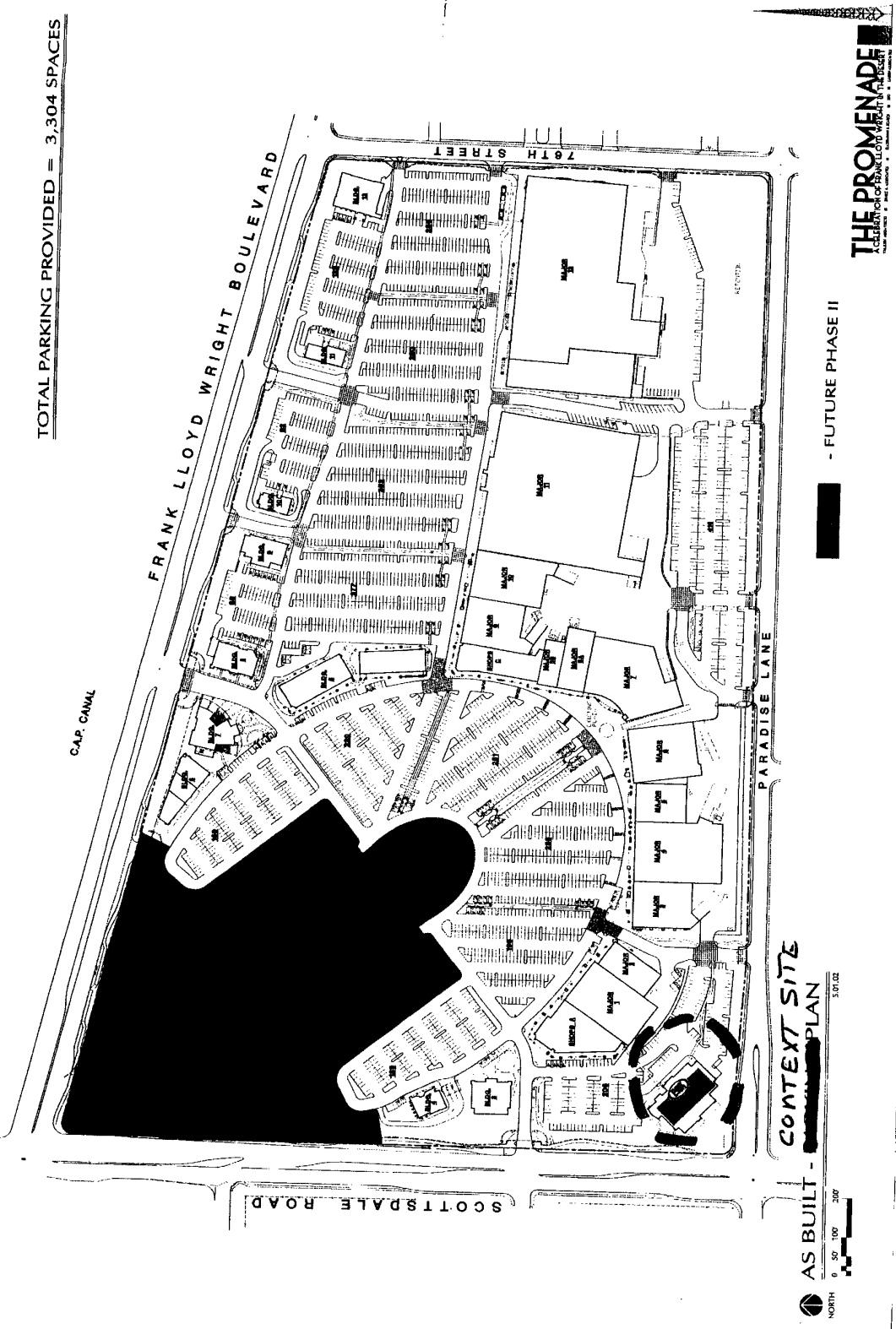
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\_\_\_\_\_  
Scottsdale Police Department  
9065 E. Via Linda  
Scottsdale, AZ 85258  
(602) 391-5000  
(602) 483-7438 - FAX  
Date: \_\_\_\_\_





TOTAL PARKING PROVIDED = 3,304 SPACES



21-UP-2002

ATTACHMENT #11

21-UP-2002

10/9/2002

# City Council Report



MEETING DATE: January 7, 2003

ITEM NO. 9

GOAL: Coordinate Planning to Balance Infrastructure

## SUBJECT

**Danny's Carwash**

## REQUEST

Request to approve:

1. A conditional use permit for a new automated car wash on a 2.6 +/- acre parcel, located at 8680 E Raintree Drive, with Central Business District (C-2).  
**22-UP-2002**

2. A conditional use permit for a new service station on a 2.6 +/- acre parcel, at located 8680 E Raintree Drive, with Central Business District (C-2).  
**23-UP-2002**

### Key Items for Consideration:

- Conformance with the Regional Use overlay district of the General Plan.
- Use permit criteria pertaining to automated car washes and service stations.
- Provision of support commercial and service uses for surrounding employment uses and nearby residential units.
- Planning Commission recommends approval, 5-0.

### Related Policies, References:

5-ZN-1998

## OWNER

CRIX Real Estate

## APPLICANT CONTACT

Armand Milazzo  
Deutsch Associates  
602-840-2929

## LOCATION

8680 E Raintree Dr

## BACKGROUND

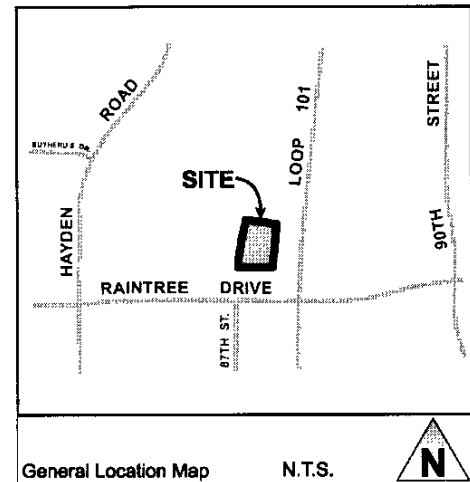
### Zoning.

The site was zoned Central Business District (C-2) in 1998. C-2 denotes Central Business District zoning, permitting retail and service establishments that serve the neighborhood, plus commercial activities designed to serve the larger community.

### General Plan.

The General Plan Land Use Element designates the property as Commercial. This category includes areas designated for commercial centers providing goods and services frequently needed by the surrounding residential population, retail businesses, major single uses, and shopping centers, which serve community and regional needs. There is also a Regional Use district overlay upon the site. This district provides flexibility for land uses when it

(Continued)



can be demonstrated that new land uses are viable in serving a regional market.

**Context.**

This site is located in Northsight, a large mixed-use project. Vacant land, zoned Central Business District (C-2), is found on the north and south sides of the site. Kohl's Department store, which is zoned Central Business District (C-2), is under construction on the west side of the site. The Loop 101 is adjacent to the east property line; beyond the highway is more Central Business District (C-2) zoned land.

**APPLICANT'S  
PROPOSAL**

**Goal/Purpose of Request.**

The applicant seeks approval of a conditional use permit for an automated car wash and service station.

**Community Impact.**

Northsight has been planned as a mixed-use project consisting of regional serving office, retail, and hotel uses. The proposed car wash and gasoline service station are support service uses for the surrounding employment and nearby residential uses in the area. Commercial uses and the Loop 101 surround the project.

The site is surrounded by commercial zoning and does not abut to any residential zoning districts. A landscape area is located along the eastern property line to buffer the use from the highway and other nearby uses. The site is also located within the interior of the overall Northsight project and not adjacent to any public streets. Access to the site comes from the internal commercial driveway located on the west and from the Loop 101 access drive located on the east. The proposed window tinting and oil/lube bay doors are all internalized to the site and will not be seen from any public street.

**IMPACT ANALYSIS**

**Traffic.**

The Northsight Area Master Circulation Plan planned and projected traffic volume counts for this site anticipates a specialty retail use. The applicant has replaced the specialty retail use with a car wash. The proposed Danny's Carwash will generate approximately 1,618 trips per day, with 142 trips occurring during the a.m. peak hour and 150 trips in the p.m. peak hour. These are nearly twice as many trips expected than were projected for the site in the Northsight area master circulation plan.

Capacity calculations for the intersection of 87<sup>th</sup> Street and Raintree Drive demonstrate that the LOS for existing movements at the intersection will not change with the addition of the project traffic. Project traffic exiting the shopping center on the new 87<sup>th</sup> Street extension north of the intersection, will operate at LOS D and F. A traffic signal will be installed, by the city, after the Danny's Carwash and the adjacent Kohl's Department Store are constructed. Installation of a traffic signal at the intersection will improve the level of service for traffic on 87<sup>th</sup> Street but will reduce the level of service for traffic on Raintree Drive.

**Parking.**

- 74 spaces are required, 77 are provided.

**Development information.**

- *Existing Use:* Vacant Central Business District (C-2) zoned property
- *Buildings/Description:* Convenience store with window tint bays, carousel automated car wash with oil/lube bays, and two separate gas canopies
- *Parcel Size:* 2.96 acres
- *Building Height Allowed:* 36 ft.
- *Proposed Building Height:* 25 ft. – 6 in.
- *Floor Area:* 15,202 sq. ft.

**Water/Sewer.**

There are new water and sewer lines within the private driveway along the western property line of the site. These lines will adequately serve the site.

**Community involvement.**

The applicant has contacted the surrounding property owners regarding this case. Letters have been sent to property owners within approximately 1,220 feet of the site. The City has also sent out post cards to property owners within 300 feet of the site. Staff has not received any comments from the public regarding this application.

**Use Permit Criteria.**

Conditional use permits, which may be revocable, conditional, or valid for a specified time period, may be granted only when expressly permitted only after the Planning Commission has made a recommendation and the City Council has found as follows:

- A. That the granting of such conditional use permit will not be materially detrimental to the public health, safety or welfare. In reaching this conclusion, the Planning Commission and the City Council's consideration shall include, but not be limited to, the following factors:
  1. Damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination. Staff has reviewed the site plan focusing on lighting as a key factor. **The applicant has submitted a lighting plan showing acceptable lighting levels. The average foot-candle amount under the canopies have been stipulated to meet acceptable level for gas stations. Noise, vibration, and illumination will not impact residents due to the closest neighborhood being located southeast and across the 101 Loop.**
  2. Impact on surrounding areas resulting from an unusual volume or character of traffic. **The site has been planned for an intense commercial center. The Northsight area master circulation plan has planned for and anticipated a variety of different commercial uses. Even though the carwash produces twice as many vehicle trips compared to the planned specialty retail use for this site, there will be no unusual volume or character of traffic in the area. Refer to the Traffic Impact Summary.**
- B. The characteristics of the proposed conditional use are reasonably compatible with the types of uses permitted in the surrounding areas.

**Northsight has been planned as a regional shopping area. The proposed carwash is compatible with the existing uses in the area.**

- C. The additional conditions specified in Section 1.403, as applicable, have been satisfied.
- a. The application shall include a detailed landscape plans showing plant, type, size and spacing. All landscape plans shall include an automated watering system and planting areas shall constitute a minimum of five (5) percent of the lot area and may be required to include as much as twenty (20) percent of the site, depending upon site size. Lack of care and maintenance of the landscape areas shall be considered due cause for revocation of the use permit. All trees planted shall have a minimum caliper of two (2) inches and all shrubs shall be at least five-gallon size. **The application includes a detailed landscape plan, which meets and exceeds the standards.**
  - b. All structures approved under this use permit shall be of a unique design character that is appropriate to the area in which they are to be constructed. Renderings of building shall accompany each application and construction shall be in reasonable conformity thereto. All canopies shall be connected to the roof of the main structure unless otherwise approved. **The Development Review Board will review the elevations submitted with this packet. The building materials are consistent with the character Northsight area. The applicant intends to utilize several building materials such as standing seam metal roof elements, sand finish E.I.F.S., and stone veneer on the buildings and canopies. The canopy will not connect to the main building. With other buildings and canopies within the site, the elevations will match and create a small commercial center versus a standard convenience store/ gas station combination.**
  - c. No driveway shall extend into the curb radius. **The application meets this criterion.**
  - d. All source of artificial light shall be concealed and shall be attached to the main structure, unless otherwise specifically approved. All lighting shall be so designed as to permit no glare. **The proposed lighting plan and lighting stipulations ensure the application meets this criterion.**
  - e. The minimum area of a lot considered adequate to accommodate this use, exclusive of street dedication, shall be twenty-two thousand five hundred (22,500) square feet. **The site is approximately 3 acres.**
  - f. A solid masonry wall or planting screen shall be required between all service station sites and residentially zoned property. (Height shall be as determined in each case.) **Even though the site is not adjacent to a residential area, the applicant has proposed a 45-foot landscape buffer along the eastern property line.**
  - g. Each site plan for a service station shall show three (3) types of areas as follows:
    1. Building area.
    2. Service area, which shall be screened from view by a masonry, wall and within which all automotive repair and service shall take place. Entry to indoor service areas shall be from the rear of the station except in cases where it may be approved otherwise by the City Council.

3. Sales area.

**The oil/lube bays and window tint bays proposed with this project have all been internalized to the interior of the site. None of the bays will be seen from a public street.**

- h. None of the above criteria shall prohibit the City Council from considering an application to reconstruct or remodel an existing service station. **This criterion does not apply.**

**There are no additional criteria pertaining to automated car washes or service stations.**

**Policy Implications.**

- The application meets the conditional use permit criteria pertaining to gasoline service stations and carwashes.
- The project will provide support commercial and service uses for adjacent employment uses and nearby residential units.

**RECOMMENDED  
APPROACH**

**Staff and Planning Commission Recommended Approach:**

Staff recommends approval, subject to the attached stipulations.

**Planning Commission:**

The Planning Commission heard this case on November 20, 2002. No one spoke at the hearing and there was no discussion. The Planning Commission found that the proposal meets the automated car wash and service station use permit criteria and recommended approval, subject to the attached stipulations.

Planning Commission recommends approval, 5-0. (Chairman Gulino abstained from voting)

**RESPONSIBLE  
DEPT(S)**

**Planning and Development Services Department**  
Current Planning Services


**STAFF CONTACT(S)**

Bill Verschuren  
Senior Planner  
480-312-7734  
E-mail: [bverschuren@ci.scottsdale.az.us](mailto:bverschuren@ci.scottsdale.az.us)

**APPROVED BY**

  
Kroy Ekblaw  
Planning and Development Services General Manager

12/13/02  
Date

  
Ed Gawf  
Deputy City Manager

12/13/02  
Date

**ATTACHMENTS**

1. Applicant's Narrative
2. Context Aerial
- 2A. Aerial Close-Up
3. Land Use Map
4. Zoning Map
5. Stipulations
6. Additional Information
7. Traffic Impact Summary
8. Citizen Involvement
9. November 20, 2002 Planning Commission Minutes
10. Building Elevations
11. Canopy Elevations
12. Landscape Plan
13. Site Plan

## **Narrative- Raintree & 101**

This project is located at Raintree & 101. It consists of a carwash, a gourmet market, a fueling canopy, staging canopy, finishing canopy and a detail building. The 9,894 SF carwash is a typical Danny's carousel with a small C-store and 5 oil & lube bays. Adjacent to the carwash is a 4,956 SF staging canopy with 4 gas pumps and a 5,760 SF finishing canopy. The canopies will allow for vacuuming, drying and window cleaning. Next to the staging canopy is also a 1,698 SF detail building which consists of 4 window tinting bays. A walkway from the carwash connects customer to the 4,100 SF Danny's Gourmet Market. The Gourmet Market will sell sandwiches, fresh oven pizza, Crispy Crème donuts, wine and other food items and has a big viewing window towards the staging canopy. It also offers outside seating where customers can enjoy a snack while watching their car being cleaned. Seating occurs on both sides of the finishing canopy to allow customers the best view towards their car. There is also some seating for employees. All seating is shaded; there are also water features between the buildings and along the sidewalk. The 10,070 SF fueling canopy will include 12 gas pumps and is located next to the Gourmet Market. It is accessible from both site entrances. The wide driveways will allow for easy access into the site. The project also includes a wide landscape area towards Pima Road/ Freeway.

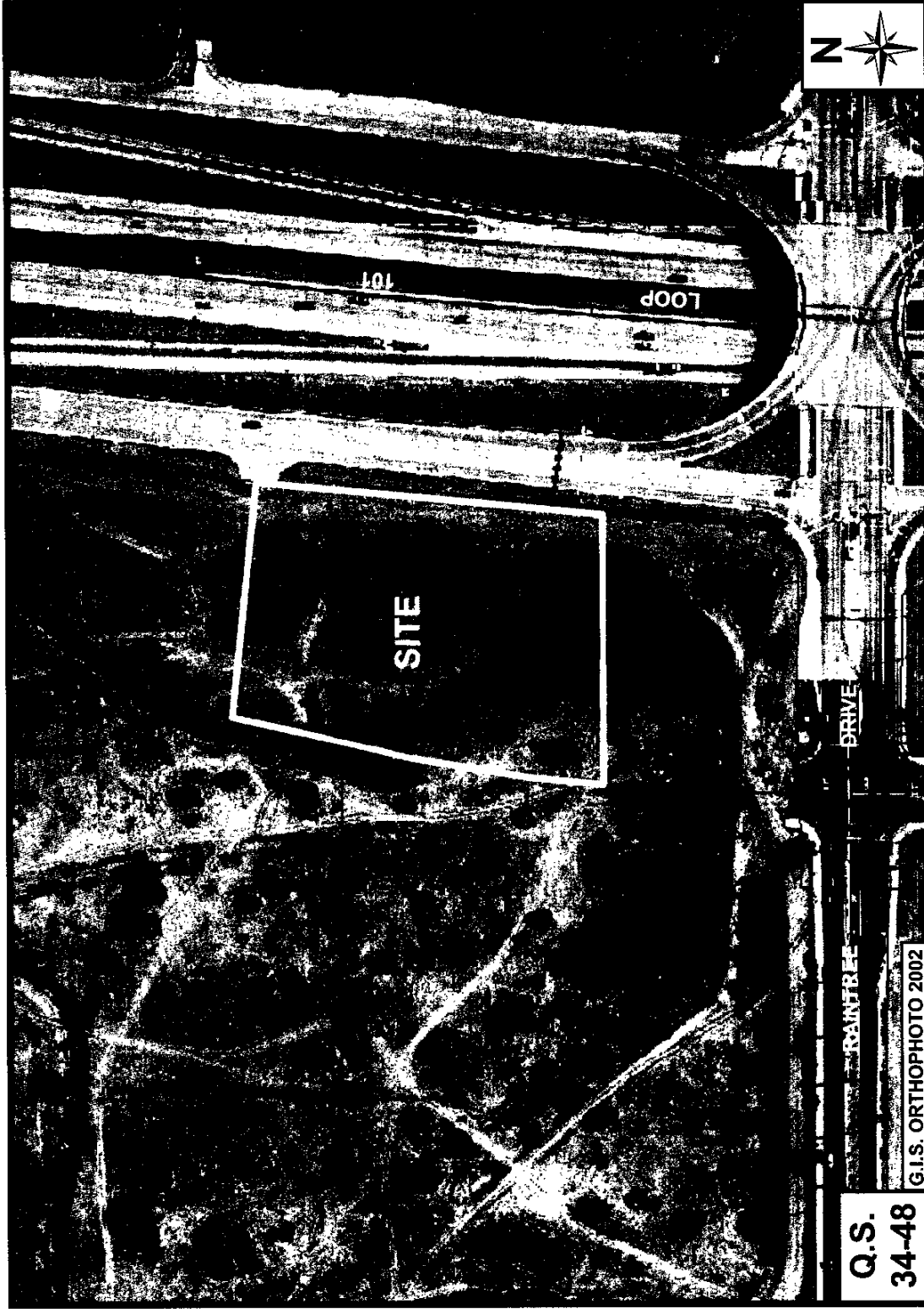




22-UP-2002

Danny's Family Carousel &  
Gourmet Market

ATTACHMENT #2

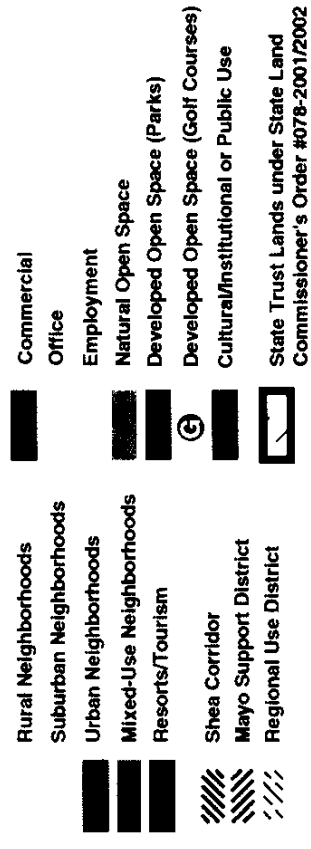
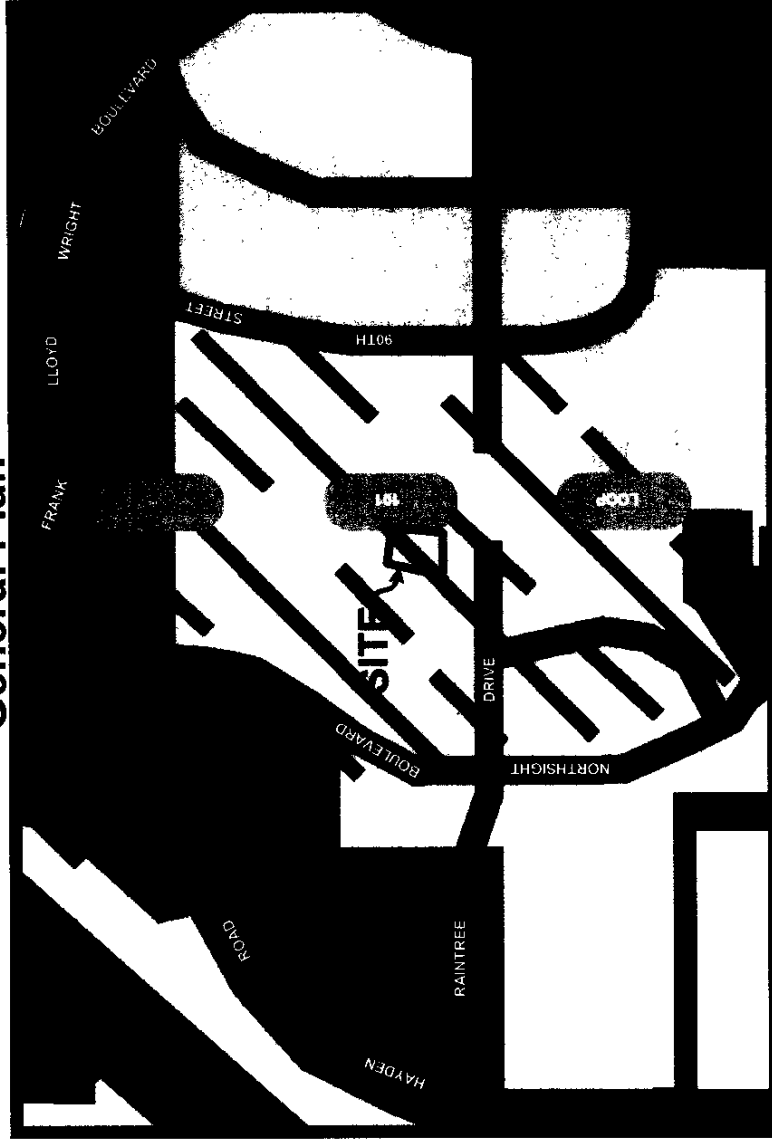


22-UP-2002

Danny's Family Carousel &  
Gourmet Market

ATTACHMENT #2A

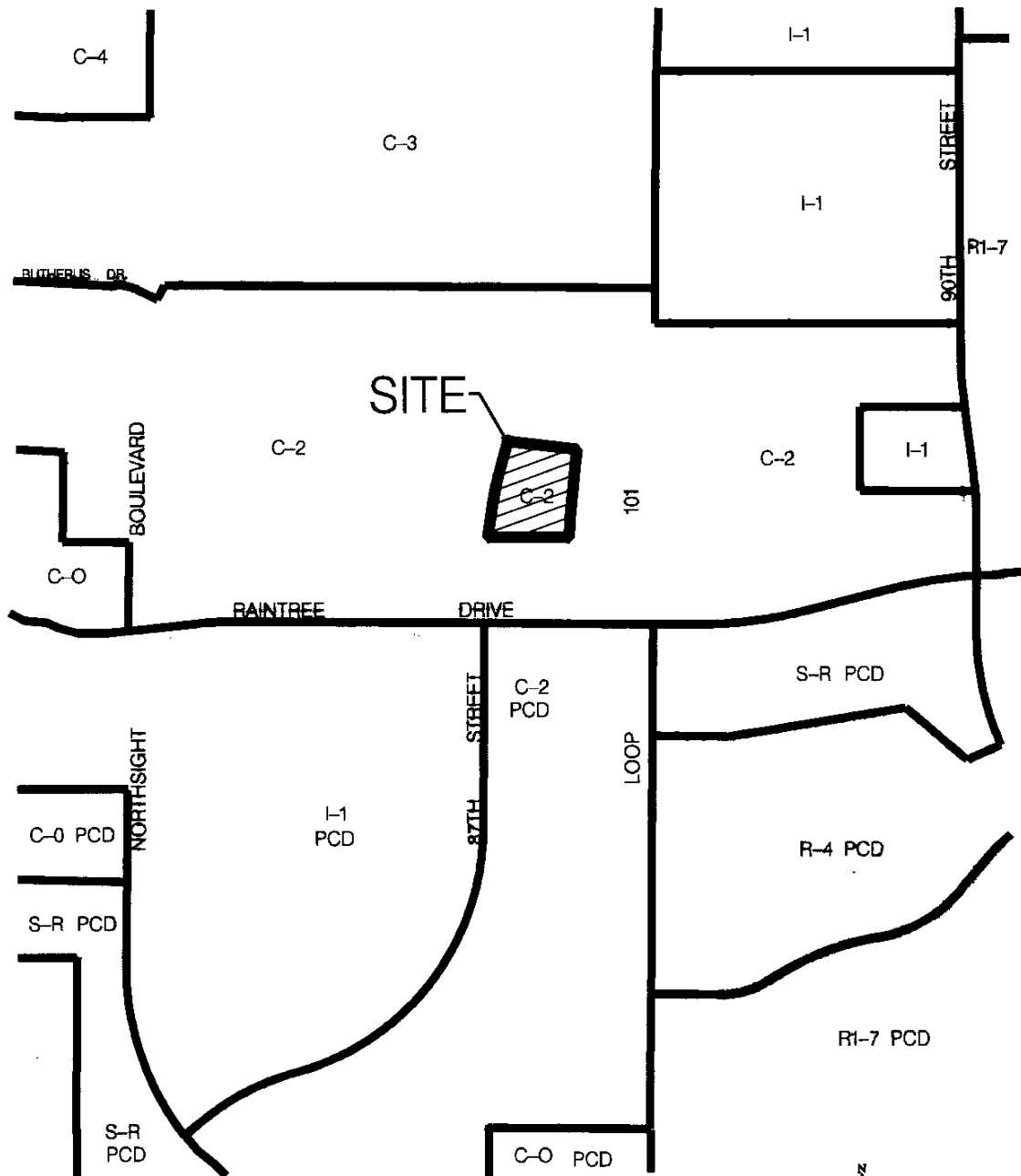
# General Plan



22-UP-2002  
ATTACHMENT #3



McDowell Sonoran Preserve (as of 3/2002)  
Recommended Study Boundary of the McDowell Sonoran Preserve  
City Boundary



22-UP-2002

ATTACHMENT #4





## STIPULATIONS FOR CASE 22-UP-2002 & 23-UP-2002

### PLANNING/ DEVELOPMENT

1. **CONFORMANCE TO DEVELOPMENT SUBMITTAL.** Development shall conform with the site plan submitted by Deutsch Associates and dated 9/17/02. These stipulations take precedence over the above-referenced site plan. Any proposed significant change, as determined by the Zoning Administrator, shall be subject to subsequent public hearings before the Planning Commission and City Council.
2. **FRONTAGE ROAD LANDSCAPING.** The applicant shall be responsible for the installation and maintenance of the landscape improvements located between the eastern property line and the back of curb of the future southbound Pima Freeway Frontage Rd. (within the ADOT right-of-way), to the satisfaction of the City of Scottsdale's Construction and Design Director. Before any landscaping improvements commence within the ADOT right-of-way, the applicant shall apply for and receive an ADOT encroachment permit, to the satisfaction of City staff.
3. **OUTDOOR DISPLAY.** No exterior vending, advertising board or product display shall be allowed.
4. **CONFORMANCE TO DESIGN GUIDELINES.** The Development Review Board Submittal shall conform to the *Gas Station and Convenience Store Design Guidelines*.
5. **OUTDOOR LIGHTING.** With the Development Review Board submittal, the developer shall provide details, notes and fixture & lamp cut sheets of the proposed exterior lighting, as well as pre-curfew and post-curfew photometric analysis of the site, to the satisfaction of City staff. All lighting shall comply with the outdoor lighting standards of the Scottsdale Zoning Ordinance. In addition, the developer shall provide documentation with the Development Review Board submittal that the following conditions shall be met prior to the issuance of a certificate of occupancy:

#### *Parking Lot and Site Lighting:*

- a) The maintained average horizontal illuminance level, at grade on the site, not including the canopy area and the area within ten (10) feet of the convenience store front shall exceed 2.5 foot-candles. The maintained maximum horizontal illuminance level, at any point at grade on the site, shall not exceed 10.00 foot-candles. The light loss factors utilized for all exterior luminaire shall be subject staff review and approval.
- c) The maintained maximum vertical illuminance at 6.0 foot above grade, along the entire perimeter of the property line (or 1 foot outside of any block wall exceeding 5 foot in height) shall not exceed 1.5 foot-candles at any point, except within 10' of a driveway. All exterior luminaires shall be included in this calculation. The light loss factors utilized for all exterior luminaire shall be subject staff review and approval.
- d) The lenses of all luminaires shall meet all IESNA requirements for full cutoff. All luminaires shall be aimed downward and inward from property line except for driveways, which may be oriented perpendicular to the drive.
- e) Any new fixture height, as measured from grade to the fixture lens, shall not exceed 20.0 feet.

- f) All non-security lighting shall be turned off within 1 hour from close of business, to the satisfaction of city staff. All-night security lighting of perimeter equipment (e.g. air/water dispensers) is encouraged to be done with other than pole-mounted luminaires, to the satisfaction of city staff.
- g) The existing and new individual luminaire lamp shall not exceed 250 watts.

*Service Station Canopy Lighting:*

- a) The maintained average horizontal illuminance level, at grade under the canopy, shall not exceed thirty (30) foot-candles. The maintained maximum horizontal illuminance level, at any point at grade under the canopy, shall not exceed fifty (50) foot-candles. The light loss factors utilized for all exterior luminaire shall be subject staff review and approval.
- b) The applicant's design shall minimize vertical illuminance upon the canopy support poles/structures at heights above 8', but is allowed to maximize illuminance upon surfaces below this level, to the satisfaction of city staff.
- c) Any new individual luminaire lamp and the existing canopy's luminaire lamps shall not exceed 250 watts
- d) Light fixtures under the canopy shall be completely recessed into the canopy with flat lenses that are translucent and completely flush with the bottom surface of the canopy.
- e) Within 1 hour of close of business, the canopy lighting shall be shifted to "post-curfew" mode, and reduced to a maximum of 1 luminaire per row of pumps.
- f) Lights shall not be mounted on the top or sides of the canopy, and the sides or fascias shall not be illuminated.

*Building Mounted Lighting:*

- a) All luminaires shall meet all IESNA requirements for full cutoff.
- b) All wall-mounted luminaires shall possess house-side shielding to reduce any illuminance "hot spots" on the building facades.
- c) All luminaires shall be recessed or shielded so the light source is not directly visible from property line, to the satisfaction of city staff.
- d) The maintained average horizontal illuminance level, within ten (10) feet of the new convenience storefront, shall not exceed five (5) foot-candles. The maintained maximum horizontal illuminance level, within 10'-0 of the convenience storefront shall not exceed fifteen (15) foot-candles.
- e) All non-security lighting shall be turned off within 1 hour from close of business, to the satisfaction of city staff.
- f) The applicant shall provide a separate horizontal photometric calculation for area within

ten (10) feet of the convenience storefront.

- g) Illuminated signage visible from outside the building shall be minimized, to the satisfaction of city staff, and shall be turned off within 1 hour of close of business.

- 15. **MAINTENANCE AND PRESERVATION-RECORDED AGREEMENT.** Before any building permit for the site is issued, the developer shall record an agreement, satisfactory to city staff, detailing the maintenance and preservation by the developer and its successors of all common areas, landscape buffers, natural areas, drainage easements and private access ways on the site and abutting rights-of-way. These designated areas shall not be accepted for maintenance or be accepted for ownership by the city without the approval of the City Council.

#### CIRCULATION

##### 1. STREET CONSTRUCTION.

- A. The developer shall provide a five foot sidewalk along the private drive (87<sup>th</sup> Street).
- B. The developer shall provide any improvements supported by the approved traffic impact study for the site, as determined by the city staff.

- 2. **ACCESS RESTRICTIONS.** Before issuance of any certificate of occupancy for the site, the developer shall dedicate the necessary right-of-way, as determined by city staff, and construct the following access to the site. Access to the site shall conform to the following restrictions (distances measured to the driveway or street centerlines):

- a. [87<sup>th</sup> street] - There shall be two (2) site driveways from 87<sup>th</sup> Street, with widths of 50 feet and 40 feet respectively.
- a. [East-west internal private access road along the site's northern boundary that intersects loop 101 southbound frontage road] - There shall be one (1) driveway with a width of 60 feet at this location.
- b. The driveway entrance at the northwest corner of the site should align with the driveway across the drive aisle.
- c. Provide an ingress/egress easement at the southwest corner of the site, as necessary, so that the property to the south can provide a driveway that aligns with the driveway across the drive aisle.
- d. The driveway on the north should be centered - equidistant from the drive on the west and the frontage road on the east.

- 3. **PEDESTRIAN CIRCULATION PLAN.** With the Development Review Board submittal, the developer shall submit a Pedestrian Circulation Plan for the site, which shall be subject to city staff approval. This plan shall indicate the location and width of all sidewalks and pedestrian pathways.

#### DRAINAGE AND FLOOD CONTROL

- 1. **CONCEPTUAL DRAINAGE REPORT.** With the Development Review Board submittal, the developer shall submit a conceptual drainage report and plan subject to city staff approval. The conceptual report and plan shall conform to the Design Standards and Policies Manual - Drainage Report Preparation. In addition, the conceptual drainage report and plan shall:

- a. Identify all major wash corridors entering and exiting the site, and calculate the peak discharge (100-yr, 6-hr storm event) for a pre- versus post-development discharge comparison of ALL washes which exit the property.
  - b. Determine easement dimensions necessary to accommodate design discharges.
  - c. Demonstrate how the storm water storage requirement is satisfied, indicating the location, volume and drainage area of all storage.
  - d. Include flood zone information to establish the basis for determining finish floor elevations in conformance with the Scottsdale Revised Code.
  - e. Include a complete description of requirements relating to project phasing.
2. **FINAL DRAINAGE REPORT.** With the improvement plan submittal to the Project Quality/Compliance Division, the developer shall submit a final drainage report and plan subject to city staff approval. The final drainage report and plan shall conform to the Design Standards and Policies Manual – Drainage Report and Preparation. In addition, the final drainage report and plan shall:
  - a. Demonstrate consistency with the approved master drainage plan and report.
    - (1) Any design that modifies the approved master drainage report requires from the developer a site-specific addendum to the final drainage report and plan, subject to review and approval by the city staff.
    - (2) Addendum generated by the final drainage analysis for this site shall be added to the appendix of the final drainage report.
  - b. Provide final calculations and detailed analysis that demonstrate consistency with the accepted conceptual drainage plan and report.
3. **STORM WATER STORAGE REQUIREMENT.** With the Development Review Board submittal, the Developer shall obtain the City of Scottsdale's approval for a storm water storage waiver. See Section 2 of the Design Standards and Policies Manual for waiver criteria.
  - a. The Request for Waiver Review form shall:
    - (1) Include a supportive argument that demonstrates historical flow through the site will be maintained, and that storm water runoff exiting this site has a safe place to flow.
    - (2) Include an estimate for payment in-lieu of on-site storm water storage, subject to city staff approval.
  - b. The developer shall obtain an approved Stormwater Storage Waiver. The approved waiver shall be obtained before the Development Review Board (DRB) case can be scheduled for a DRB hearing, and before the developer submits the improvement plans to the Development Quality/Compliance Division.

#### VERIFICATION OF COMPLIANCE

1. **AS-BUILT PLANS.** City staff may at any time request the developer to submit As-built plans to the Inspection Services Division. As-built plans shall be certified in writing by a registered professional civil engineer, using as-built data from a registered land surveyor. As-built plans for drainage facilities and structures shall include, but are not limited to, streets, lot grading, storm drain pipe, valley gutters, curb and gutter, flood walls, culverts, inlet and outlet structures, dams, berms, lined and unlined open channels, storm water storage basins and underground storm water storage tanks, bridges as determined by city staff.

## WATER

1. **BASIS OF DESIGN REPORT (WATER).** Before the improvement plan submittal to the Development Quality/Compliance Division, the developer shall submit a basis of design report and plan to the One Stop Shop in Development Services. The report must be approved by the Water Resources Department before the developer submits the improvement plans to the One Stop Shop. The basis of design report shall conform to the Design Standards and Policies Manual. In addition, the basis of design report and plan shall:
  - a. Identify the location, size, condition and availability of existing water lines and water related facilities such as water valves, water services, fire hydrants, back-flow prevention structures, etc.
  - b. Identify the timing of and parties responsible for construction of all water facilities.
  - c. Include a complete description of requirements relating to project phasing.
2. **APPROVED BASIS OF DESIGN REPORT.** Before the improvement plan submittal to the Project Quality/Compliance Division, the developer shall have obtained approval of the Basis of Design Report.
3. **NEW WATER FACILITIES.** Before the issuance of Letters of Acceptance by the Inspection Services Division, the developer shall provide all water lines and water related facilities necessary to serve the site. Water line and water related facilities shall conform to the city Water System Master Plan.
4. **WATERLINE EASEMENTS.** Before the issuance of any building permit for the site, the developer shall dedicate to the city, in conformance with the Scottsdale Revised Code the Design Standards and Policies Manual, all water easements necessary to serve the site.

## WASTEWATER

1. **BASIS OF DESIGN REPORT (SANITARY SEWER).** ). Before the improvement plan submittal to the Development Quality/Compliance Division, the developer shall submit a basis of design report and plan to the One Stop Shop in Development Services. The report must be approved by the Water Resources Department before the developer submits the improvement plans to the One Stop Shop. The basis of design report shall conform to the Design Standards and Policies Manual. In addition, the basis of design report and plan shall:
  - a. Identify the location of, the size, condition and availability of existing sanitary sewer lines and wastewater related facilities.
  - b. Identify the timing of and parties responsible for construction of all sanitary sewer facilities.
  - c. Include a complete description of requirements relating to project phasing.
2. **APPROVED BASIS OF DESIGN REPORT.** Before the improvement plan submittal to the Project Quality/Compliance Division, the developer shall have obtained approval of the Basis of Design Report.
3. **NEW WASTEWATER FACILITIES.** Before the issuance of Letters of Acceptance by the Inspection Services Division, the developer shall provide all sanitary sewer lines and wastewater related facilities necessary to serve the site. Sanitary sewer lines and wastewater related facilities shall conform to the city Wastewater System Master Plan.

4. **SANITARY SEWER EASEMENTS.** Before the issuance of any building permit for the site, the developer shall dedicate to the city, in conformance with the Scottsdale Revised Code and the Design Standards and Policies Manual, all sewer easements necessary to serve the site.
5. Prior to final plans approval, the developer must obtain an Individual Industrial NPDES Permit.

#### OTHER REQUIREMENTS

1. **ENVIRONMENTAL PROTECTION AGENCY (EPA) REQUIREMENTS.** All construction activities that disturb one or more acres shall obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Construction Activities. [NOI forms are available in the City of Scottsdale One Stop Shop, 7447 East Indian School Road, Suite 100. Contact Region 9 of the U.S. Environmental Protection Agency at 415-744-1500, and the Arizona Department of Environmental Quality at 602-207-4574 or at web site <http://www.epa.gov/region9>.] The developer shall:
  - a. Submit a completed Notice of Intent (NOI) to the EPA.
  - b. Submit a completed Storm Water Pollution Prevention Plan (SWPPP) with the improvement plan submittal to the Development Quality/Compliance Division.
2. **NOTICE OF INTENT (NOI).** With the improvement plan submittal to the Project Quality/Compliance Division, the developer shall submit a copy of the NOI.
3. **SECTION 404 PERMITS.** With the improvement plan submittal to the Project Quality/Compliance Division, the developer' engineer must certify that it complies with, or is exempt from, Section 404 of the Clean Water Act of the United States. [Section 404 regulates the discharge of dredged or fill material into a wetland, lake, (including dry lakes), river, stream (including intermittent streams, ephemeral washes, and arroyos), or other waters of the United States.]
4. **DUST CONTROL PERMITS.** Before commencing grading on sites 1/10 acre or larger, the developer shall have obtained a Dust Control Permit (earth moving equipment permit) from Maricopa County Division of Air Pollution Control. Call the county 602-507-6727 for fees and application information.
5. **UTILITY CONFLICT COORDINATION.** With the improvement plan submittal to the Project Quality/Compliance Division, the developer shall submit a signed No Conflict form (not required for city owned utilities) from every affected utility company.
6. **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY REQUIREMENTS (ADEQ).** The developer shall be responsible for conformance with ADEQ regulations and requirements for submittals, approvals, and notifications. The developer shall demonstrate compliance with Engineering Bulletin #10 Guidelines for the Construction of Water Systems, and Engineering Bulletin #11 Minimum Requirements for Design, Submission of Plans, and Specifications of Sewerage Works, published by the ADEQ. In addition:
  - a. Before approval of final improvement plans by the Project Quality/Compliance Division, the developer shall submit a cover sheet for the final improvement plans with a completed signature and date of approval from the Maricopa County Environmental Services Department (MCESD).
  - b. Before issuance of encroachment permits by city staff, the developer shall provide evidence to city staff that a Certificate of Approval to Construct Water and/or Wastewater Systems has

been submitted to the MCESD. This evidence shall be on a document developed and date stamped by the MCESD staff.

- c. Before commencing construction, the developer shall submit evidence to city staff that Notification of Starting Construction has been submitted to the MCESD. This evidence shall be on a document developed and date stamped by the MCESD staff.
- d. Before acceptance of improvements by the city Inspection Services Division, the developer shall submit a Certificate of Approval of Construction signed by the MCESD and a copy of the As-Built drawings.
- e. Before issuance of Letters of Acceptance by the city Inspection Services Division, the developer shall:
  - (1) Provide to the MCESD, As-Built drawings for the water and/or sanitary sewer lines and all related facilities, subject to approval by the MCESD staff, and to city staff, a copy of the approved As-Built drawings and/or a Certification of As-Built, as issued by the MCESD.
  - (2) Provide to the MCESD a copy of the Engineers Certificate of Completion with all test results, analysis results, and calculations, as indicated on the form.
  - (3) Provide to the MCESD a copy of the Request for Certificate of Approval of Construction of water and/or sanitary sewer lines with all appropriate quantities.
  - (4) Provide the city Inspection Services Division a copy of the Certificate of Approval of Construction, as issued by the MCESD.



## **ADDITIONAL INFORMATION FOR CASE 22-UP-2002 & 23-UP-2002**

### **PLANNING/DEVELOPMENT**

1. **DEVELOPMENT CONTINGENCIES.** The approved development program, including intensity, may be changed due to drainage issues, topography, NAOS requirements, and other site planning concerns which will need to be resolved at the time of preliminary plat or site plan approval. Appropriate design solutions to these constraints may preclude achievement of the proposed development program.
2. **DEVELOPMENT REVIEW BOARD.** The City Council directs the Development Review Board's attention to:
  - a. the type, height, design, and intensity of proposed lighting on the site, to ensure that it is compatible with the adjacent use,
  - b. major stormwater management systems,
  - c. signage.
3. **NATIVE PLANT PRESERVATION.** The owner shall secure a native plant permit as defined in the Scottsdale Revised Code for each parcel. City staff will work with the owner to designate the extent of the survey required within large areas of proposed undisturbed open space. Where excess plant material is anticipated, those plants shall be offered to the public at no cost to the owner in accordance with state law and permit procedure or may be offered for sale.

### **ENGINEERING**

1. **RESPONSIBILITY FOR CONSTRUCTION OF INFRASTRUCTURE.** The developer shall be responsible for all improvements associated with the development or phase of the development and/or required for access or service to the development or phase of the development. Improvements shall include, but not be limited to washes, storm drains, drainage structures, water systems, sanitary sewer systems, curbs and gutters, paving, sidewalks, streetlights, street signs, and landscaping. The granting of zoning/use permit does not and shall not commit the city to provide any of these improvements.
2. **FEES.** The construction of water and sewer facilities necessary to serve the site shall not be in lieu of those fees that are applicable at the time building permits are granted. Fees shall include, but not be limited to the water development fee, water resources development fee, water recharge fee, sewer development fee or development tax, water replenishment district charge, pump tax, or any other water, sewer, or effluent fee.
3. **STREET CONSTRUCTION STANDARDS.** The streets for the site shall be designed and constructed to the standards in the Design Standards and Policies Manual.
4. **CITY CONTROL OF ACCESS.** The city retains the right to modify or void access within city right-of-way. The city's responsibility to promote safe conditions for the traveling public takes precedence over the stipulations above.



**TRAFFIC IMPACT ANALYSIS SUMMARY**  
**313-PA-2002**  
**Danny's Car Wash**  
**NWC Loop 101 and Raintree Drive**

**Existing Conditions:**

The site is located just north of Raintree Drive between the Loop 101 Freeway southbound frontage road and 87<sup>th</sup> Street. The location is within the 340-acre mixed-use Northsight development area. The Northsight development area is located west of Loop 101 and includes land on the east and west sides of Northsight Boulevard. Much of the Northsight area has already been developed to include shopping centers, a Home Depot, a car dealership, a Wal-Mart Supercenter, a Sam's Club, several restaurants, and office buildings among other uses.

Raintree Drive is identified as a Citywide System Street on the new mobility element of the city's General Plan and is designed as a minor arterial cross section. The street has two lanes in each direction with a landscaped median. The posted speed limit on Raintree Drive in the vicinity of 87<sup>th</sup> Street is 35-MPH. The average daily traffic volume on Raintree Drive as measured in July 2002 is 27,300 vehicles per day. A minor arterial cross section is designed to carry up to 35,000 vehicles per day. Raintree Drive is approximately 2.5 miles long running from just west of Hayden Road to just east of Frank Lloyd Wright Boulevard.

87<sup>th</sup> Street is identified as a Neighborhood System street on the new mobility element of the city's General Plan and is designed as a minor arterial cross section. 87<sup>th</sup> Street has two lanes in each direction with a landscaped median. The posted speed limit on 87<sup>th</sup> Street is 35-MPH. The average daily traffic volume on 87<sup>th</sup> Street as measured in July 2002 is 2,900 vehicles per day. Eighty-seventh Street is approximately ½ mile long running from Northsight Boulevard to Raintree Drive.

The intersection of 87<sup>th</sup> Street & Raintree Drive is currently a tee intersection because 87<sup>th</sup> Street does not extend north of Raintree Drive. The existing traffic control is a stop sign for 87<sup>th</sup> Street at Raintree Drive. Less than 300 feet east of the intersection of 87<sup>th</sup> Street & Raintree Drive is the Loop 101 interchange at Raintree Drive.

Accident data was reviewed for 2001 and to date 2002. During this time period, there has only been one collision in the vicinity of the intersection of 87<sup>th</sup> Street & Raintree Drive. The collision was a rear end collision involving two northbound vehicles on 87<sup>th</sup> Street south of Raintree Drive.

**Proposed Development:**

The proposal for the project site is a car wash that includes a gas station with 24 fueling positions, a full service car wash, and a convenience store. Existing zoning on the site is Central Business District (C-2). Under the C-2 zoning, a use permit is required to accommodate the car wash component of this proposal.

Access to the project site is via two private access roads internal to the Northsight development area. One internal access road is actually an extension of 87<sup>th</sup> Street north of Raintree Drive and is along the west boundary of the project site. The proposed site plan has two driveways to this access road. The other internal access road is along the north boundary of the project site and is an east-west aligned road that intersects the

Loop 101 southbound frontage road. The proposed site plan has one driveway to this access road. The applicant proposed driveway widths of 70, 80, and 89 feet. Staff worked with Kirkham Michael and the applicant to reduce the driveways widths to 50, 40, and 60 feet respectively. These widths can still accommodate the fuel tanker truck turning radius.

The Trip Generation Table below shows the total new trips that will be generated by the proposed project. The trip generation calculations for the gasoline station and convenience store are based on data contained in the Institute of Transportation Engineer's *Trip Generation*. The proposed developer, Danny's car wash, provided the trip generation data for the car wash component of the planned development. Danny's keeps detailed trip generation records for the car wash component of their various facilities. The trip generation for the car wash is calculated separately from the rest of the uses on the site because it has its own fueling facilities and there is little interaction between it and the gas station and convenience market. The car wash data used in this study is based on the characteristics of the busiest Danny's car wash store in Scottsdale, which is located on the southeast corner of the intersection of Scottsdale Road & Tierra Buena.

The total new trips on the street network will actually be much lower than the total trips generated by the Danny's car wash. This is due to the fact that many of the Danny's car wash customers will be people visiting another business within the Northsight area or people driving by the site on their way to another destination. A reduction factor has been applied to the total site trip generation to account for these internal capture and pass by trips. This information is summarized in the Trip Generation Table below.

**TRIP GENERATION TABLE**

Land Use	Daily Total	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
Gas Station & Convenience Store <i>24 fueling positions</i>	3,907	219	219	438	199	199	398
Carousel Car Wash <i>with fueling positions</i>	756	18	18	36	34	34	68
Total Trips	4,663	237	236	474	233	233	466
Internal Capture/Pass By Trips	-3,045	-166	-166	-332	-158	-158	-316
<b>Total New Trips</b>	<b>1,618</b>	<b>71</b>	<b>71</b>	<b>142</b>	<b>75</b>	<b>75</b>	<b>150</b>

A traffic impact study has been prepared for this project by Kirkham Michael Consulting Engineers under the City of Scottsdale's Traffic Impact and Mitigation Analysis (TIMA) Program. The traffic impact study compares the trip generation characteristics of the proposed project to other uses permitted under the existing C-2 zoning and examines the impacts from the proposed project.

A Northsight master circulation plan was prepared for the Northsight shopping area and approved by the City. In the master circulation plan, development on the project site was assumed to be Specialty Retail. Another possible scenario that would be permitted

under the C-2 zoning without a use permit and would also be reasonable for the project site is two fast-food type restaurants without drive-thru windows. The Trip Generation Comparison Table below compares the number of trips generated by the different possible scenarios on this project site.

**TRIP GENERATION COMPARISON TABLE**

Land Use	Daily Total	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
<b>SCENARIO 1:</b> Danny's Car Wash	1,618	71	71	142	75	75	150
<b>SCENARIO 2:</b> Specialty Retail 21,632 sq ft	880	14	6	20	24	32	56
<b>Difference in Total Trips</b>	<b>+738</b>	<b>+57</b>	<b>+65</b>	<b>+122</b>	<b>+51</b>	<b>+43</b>	<b>+94</b>
<b>SCENARIO 1:</b> Danny's Car Wash	1,618	71	71	142	75	75	150
<b>SCENARIO 3:</b> Two Fast Food Restaurants 3,000 sq ft each	1,637	87	58	145	44	42	86
<b>Difference in Total Trips</b>	<b>-19</b>	<b>-16</b>	<b>-13</b>	<b>-3</b>	<b>+31</b>	<b>+32</b>	<b>+64</b>

The Trip Generation Comparison Table above demonstrates that the Danny's car wash scenario generates nearly twice as many daily trips as the Specialty Retail use scenario that was assumed in the Northsight master circulation study; however, the proposed Danny's car wash scenario generates fewer daily trips than the fast food restaurant scenario that would be allowed under the existing zoning without a use permit.

#### **Future Conditions:**

The traffic impact study analyzes the traffic conditions for the horizon year of 2005. Intersection capacity was evaluated for the intersection of 87<sup>th</sup> Street & Raintree Drive with and without the proposed project traffic. Capacity calculations include the effects of the Danny's car wash and the Kohl's department store and demonstrate that the level of service (LOS) for all existing movements at the intersection will not change with the addition of the project traffic. Project traffic exiting the shopping center southbound on the new 87<sup>th</sup> Street extension will operate at LOS D and F. This is typical for a minor street during peak hours operating under stop control (unsignalized intersection).

Capacity calculations were also evaluated for changing control at the intersection from two-way stop control on 87<sup>th</sup> Street to a traffic signal. Installing a traffic signal improves the LOS for movements on 87<sup>th</sup> Street from LOS D and F to LOS C and D. However, adding the signal downgrades the LOS for through movements on Raintree Drive from LOS A to LOS B and C by forcing vehicles that are currently free flowing to stop periodically.

A signal warrant analysis prepared by Kirkham Michael demonstrates that a traffic signal will be warranted for the 2005 volumes with traffic from approved development in this area and the proposed Danny's car wash. Traffic signal conduits, junction boxes, and pole foundations have already been installed at the intersection in anticipation of the future traffic signal.

**Additional Information:**

Two other projects are planned for parcels adjacent to the project site in the Northsight area. A Kohl's department store has been approved just west of the Danny's car wash site. A Bank of America is planned for the parcel immediately south of the Danny's car wash site. The site plan for the Danny's car wash was evaluated for its compatibility with the adjacent uses. The northern driveway on the 87<sup>th</sup> Street internal access road was designed to align with a driveway for the Kohl's store. Cross access is not proposed between the Danny's site and the Bank of America site.

A traffic signal was previously approved and constructed but not activated at 87<sup>th</sup> Street and Raintree Drive as part of the approved master plans for Northsight Development. The traffic signal was removed during the construction of the Loop 101 Freeway interchange at Raintree Drive because it was not warranted at the time. The expectation is that with the development of the commercial area north of Raintree Drive and the construction of the north leg of 87<sup>th</sup> Street, the signal would be reconstructed.

**Summary:**

The proposed Danny's car wash will generate approximately 1,618 trips per day, with 142 trips occurring during the a.m. peak hour and 150 trips in the p.m. peak hour. This is nearly twice as many trips than was projected for the site in the Northsight area master circulation plan, which assumed a Specialty Retail land use. However, there are other scenarios under the existing C-2 zoning that could be developed on the site without a use permit that would generate slightly more trips than the proposed Danny's car wash. In one such scenario the site could accommodate two fast-food type restaurants.

Capacity calculations for the intersection of 87<sup>th</sup> Street & Raintree Drive demonstrate that the LOS for existing movements at the intersection will not change with the addition of the project traffic. Project traffic exiting the shopping center on the new 87<sup>th</sup> Street extension north of the intersection, will operate at LOS D and F. A traffic signal is expected to be warranted for the year 2005 with the traffic generated by this project and planned adjacent development. Installation of a traffic signal at the intersection will improve the level of service for traffic on 87<sup>th</sup> Street but reduce the level of service for traffic on Raintree Drive.

**CASE NO. 313-PA-2002**

**PROJECT LOCATION: NWC Raintree Drive & Loop 101**

## **COMMUNITY INPUT CERTIFICATION**

It is valued in the City of Scottsdale that all applicants for rezoning, use permit, and/or variances will inform, and will invite input from neighboring residents, affected school districts, and other parties that may be impacted by the proposed use. The applicant shall submit this completed certification with the application as verification that such contact has been made.

DATE	NAME (Person, Organization, Etc. and Address)	Type	Of	Contact
		Meeting	Phone	Letter
7/30/02	(215-52-37 C) Wal-Mart Stores Inc. 1301 S E 10 <sup>th</sup> Street Bentonville, AR 72716-0550			<b>X</b>
7/30/02	(215-53-06 G) Liberty Property Scottsdale 65 Valley Stream Pkwy Malvern, PA 19355			<b>X</b>
7/30/02	(215-53-05 H) Mall at the Crossroads Inc. 19208 59 <sup>th</sup> Drive N E Arlington, WA 98223			<b>X</b>
7/30/02	(215-53-06 H) Opus Corporation 2415 E. Camelback Rd. Phoenix, AZ 85016			<b>X</b>
7/30/02	(215-53-943 & 944) Raintree 23 Limited Partnership 15880 N Greenway-Hayden Loop Scottsdale, AZ 85260			<b>X</b>
7/30/02	(215-52- 36 J) Home Depot USA Inc. P.O. Box 105842 Atlanta, GA 30348-5842			<b>X</b>

7/30/02	(217-15-35) Arizona State Dept. of Transportation 205 S. 17 <sup>th</sup> Avenue Phoenix, AZ 85007			<b>X</b>
7/30/02	(21715-36 D) SCC I Limited Partnership 15880 N. Greenway-Hayden Loop Scottsdale, AZ 85260			<b>X</b>
7/30/02	(217-15-33) Eugene Wesolowski 464 W. Cherry Lynn Phoenix, AZ 85013			<b>X</b>
7/30/02	(217-15-945) Land A Real Estate Holding LLC 8350 E Evans Rd. Scottsdale, AZ 85260			<b>X</b>
7/30/02	(217-15-949) Yozipovic Properties LLC 8940 E. Raintree Dr. Scottsdale, AZ 85260			<b>X</b>
7/30/02	(217-15-950) Raintree 8950 Associates LLC 8129 N 87 <sup>th</sup> Place Scottsdale, AZ 85258			<b>X</b>
7/30/02	(217-15-951) 8960 Raintree LLC 8960 E. Raintree Drive Scottsdale, AZ 85260			<b>X</b>
7/30/02	(217-15-30 B) APS P.O. Box 53999 STA 9282 Phoenix, AZ 85072			<b>X</b>
7/30/02	(215-52-35 F) Founders Bank of Arizona 7335 E. Double Tree Ranch Road Scottsdale, AZ 85258			<b>X</b>
7/30/02	(215-52-35 J) Northsite Village III LLC 550 N Scottsdale Rd. Tempe, AZ 85281			<b>X</b>

7/30/02	(215-52-35 D) Upside LLC 7373 E. Double Tree Ranch Road Scottsdale, AZ 85258			X
7/30/02	(217-15-687) Herbert & Beverly Morton 8810 E Palm Ridge Dr. Scottsdale, AZ 85260			X
7/30/02	(217-15-688) Tom Agriopoulos 8826 E Palm Ridge Dr. Scottsdale, AZ 85260			X
7/30/02	(217-15-689) Richard & Donna Duncan 8842 E Palm Ridge Dr.. Scottsdale, AZ 85260			X
7/30/02	(217-15-690) Antionetta Rinaldi 8858 E Palm Ridge Dr. Scottsdale, AZ 85260			X

  
Signature of owner/applicant

7/30/02  
Date



# LAND DEVELOPMENT SERVICES, L.L.C.

PROJECT MANAGEMENT FEASIBILITY VALUE ENGINEERING

July 30, 2002

name  
address  
city

**SAMPLE**

RE: Danny's Car Wash – north of the northwest corner of Raintree Drive & Loop 101

Dear Property Owner(s):

The purpose of this letter is to inform you that the Danny's Car Wash Development Group is proposing to build a full service car wash facility on a parcel located north of the northeast corner of Raintree Drive and the Loop 101. The facility will include a car wash, gasoline fuel pumps, oil & lube service and convenient store goods with a gourmet market.

Our services have been retained to assist with a submittal to the City of Scottsdale for a use permit for a car wash and service station facility. In an attempt to be a good neighbor, allow for community input and communication, we welcome any comments or questions you may have regarding the proposed project. Our application is not yet scheduled for public hearing, however we anticipate to be heard by the City's Planning Commission and City Council this fall. Please do not hesitate to call me at (480) 946-5020 if you have any questions regarding our application.

Sincerely,

*Thomas J. Rief*

Thomas J. Rief

SUITE 5 4413 NORTH SADDLEBAG TRAIL SCOTTSDALE, ARIZONA 85251-3445  
OFFICE: (480) 946-5020 FAX: (480) 946-5041





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Parcel #: 215 - 53 - 006-G

Property  
Address

AZ

Subdivision Name: NORTHSIGHT PARCEL 1-6 TR A

Lot #: 2

MCR #: 30211

Property Description: NORTHSIGHT MCR 302-11 PT PARCEL 2 & ALSO TH PT ABAND RD LY  
 Section Township Range: ADJ TO WLY LN OF SD PARCEL P/F 94-128764  
 12 3N 4E

Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner: LIBERTY PROPERTY SCOTTSDALE LIMITED PART

Mailing 65 VALLEY STREAM

Address

PKWY..

MALVERN, PA 19355

Deed #: 000687537

Sales Price: n/a \*

Deed Date: 9/6/2000

Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**[View Comparables \(COMPS\)](#)

Tax Year:	2003	2002	2001
Full Cash Value:	\$4,848,000	\$4,848,000	\$4,214,339
Limited Property Value:	\$3,546,998	\$3,113,330	\$2,535,106
Legal Class:	2	2	2
Assessment Ratio:	16%	0%	16%
Assessed FCV	\$775,680	\$0	\$674,294
Assessed LPV	\$567,520	\$0	\$405,617
Property Use Code:			
Tax Area Code:	691400	691400	691400

**Additional Component Information ( for this parcel )**
[Valuation](#) [Characteristics](#)
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Parcel #: 215 - 53 - 005-H

Property  
Address

AZ

Subdivision Name: NORTHSIGHT PARCEL 1-6 TR A

Lot #: 1

MCR #: 30211

 Property Description: NORTHSIGHT MCR 302/11 PARCEL 1 EX TH PT LY ELY OF LN DAF COM  
 SE COR SEC 12 3N 4E TH W 263.03F TO POB

Section Township Range: 12 3N 4E

Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner: MALL AT THE CROSSROADS INC

Mailing  
Address 19208 59TH DR NE  
ARLINGTON, WA 98223

Deed #: 900533223

Sales Price: n/a \*

Deed Date: 11/30/1990

Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**

Tax Year:	2003	2002	2001
Full Cash Value:	\$1		
Limited Property Value:	\$1		
Legal Class:	2		
Assessment Ratio:	0%		
Assessed FCV	\$0		
Assessed LPV	\$0		
Property Use Code:	0022		
Tax Area Code:	691400		

**Additional Component Information ( for this parcel )**
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New Search**Property Information**[View GIS Maps](#)

Parcel #: 215 - 53 - 006-H  
 Property Address: 14500 N 87TH ST  
 SCOTTSDALE, AZ

Subdivision Name: NORTHSIGHT PARCEL 1-6 TR A  
 Lot #: 2 MCR #: 30211

Property Description: NORTHSIGHT MCR 302-11 PARCEL 2 EX ANY PT LY W/IN PROP DESC  
 P/F 97-0778289 TOG WI THAT PT OF ABAND RD  
 Section Township Range: 12 3N 4E Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner: OPUS WEST CORPORATION  
 Mailing Address: 2415 E CAMELBACK RD S..  
 PHOENIX, AZ 85016-

Deed #: 010813632 Sales Price: n/a \*  
 Deed Date: 8/31/2001 Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**[View Comparables \(COMPS\)](#)

Tax Year:	2003	2002	2001
Full Cash Value:	\$1,681,000	\$1,681,000	\$1,467,341
Limited Property Value:	\$1,231,938	\$1,082,251	\$882,668
Legal Class:	2	2	2
Assessment Ratio:	16%	0%	16%
Assessed FCV	\$268,960	\$0	\$234,775
Assessed LPV	\$197,110	\$0	\$141,227
Property Use Code:			
Tax Area Code:	691400	691400	691400

**Additional Component Information ( for this parcel )**
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New Search**Property Information**[View GIS Maps](#)

Parcel #: 217 - 15 - 943  
 Property Address: 8800 E RAINTREE DR  
 SCOTTSDALE, AZ 85260

Subdivision Name: RAINTREE CORPORATE CENTER  
 MOD

Lot #: 2 MCR #: 50623

Property Description: RAINTREE CORPORATE CENTER MOD MCR 506-23  
 Section Township Range: 7.3N 5E Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner: RAINTREE 23 LIMITED PARTNERSHIP  
 Mailing Address: 15880 N GREENWAY  
 Address: HAYD., SCOTTSDALE, AZ 85260

Deed #: 990610109

Sales Price: n/a \*

Deed Date: 6/28/1999

Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**[View Comparables \(COMPS\)](#)

Tax Year:	2003	2002	2001
Full Cash Value:	\$2,029,500	\$2,029,500	\$1,048,500
Limited Property Value:	\$1,306,651	\$1,065,701	\$744,435
Legal Class:	2	2	2
Assessment Ratio:	16%	16%	16%
Assessed FCV	\$324,720	\$324,720	\$167,760
Assessed LPV	\$209,064	\$170,512	\$119,110
Property Use Code:			
Tax Area Code:	481400	481400	481400

**Additional Component Information ( for this parcel )**
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New Search**Property Information**[View GIS Maps](#)

Parcel #: 215 - 52 - 036-J  
 Property Address: 15509 N HAYDEN RD  
 SCOTTSDALE, AZ 85260  
 Subdivision Name: NORTHSIGHT 2 PAR 1-6  
 Lot #: 3 MCR #: 31515

Property Description: NORTHSIGHT 2 MCR 315-15 PARCEL 3 TOG WI THAT PT OF ABAND RD  
 LY ADJ TO ELY LN SD PARCEL P/F 94-128764  
 Section Township Range: 1 3N 4E Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner: HOME DEPOT USA INC  
 Mailing Address: P O BOX 105842  
 ATLANTA, GA 30348-5842  
 Deed #: 970436663 Sales Price: n/a \*  
 Deed Date: 6/27/1997 Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**[View Comparables \(COMPS\)](#)

Tax Year:	2003	2002	2001
Full Cash Value:	\$1,208,862	\$1,205,460	\$572,409
Limited Property Value:	\$756,845	\$606,173	\$406,410
Legal Class:	1	1	M
Assessment Ratio:	25%	0%	16%
Assessed FCV	\$302,216	\$0	\$91,585
Assessed LPV	\$189,211	\$0	\$65,026
Property Use Code:			0021
Tax Area Code:	691400	691400	691400

**Additional Component Information ( for this parcel )**
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New Search**Property Information**[View GIS Maps](#)

Parcel #: 217 - 15 - 035

Property  
Address

, AZ

Subdivision Name:

Lot #:

MCR #:

Property Description:

LOT 5 /N2 NW4 LOT 2/ OR N2 NW4 SW4 NW4 SEC 7 EX W 60F TH/OF

Section Township Range:

7 3N 5E

Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner:

ARIZONA STATE OF DEPARTMENT OF TRANSPORT

Mailing

205 S 17TH AVE STE 61..

Deed #: 980635323

Sales Price: n/a \*

Address

PHOENIX, AZ 85007

Deed Date: 7/23/1998

Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**

Tax Year:	2003	2002	2001
Full Cash Value:	\$254,000	\$254,000	\$254,000
Limited Property Value:	\$239,777	\$217,979	\$198,163
Legal Class:	2	2	2
Assessment Ratio:	16%	16%	16%
Assessed FCV	\$40,640	\$40,640	\$40,640
Assessed LPV	\$38,364	\$34,877	\$31,706
Property Use Code:	9600	9600	9600
Tax Area Code:	481400	481400	481400

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New Search**Property Information**[View GIS Maps](#)

Parcel #: 217 - 15 - 036-D  
 Property Address: 15111 N PIMA RD  
 SCOTTSDALE, AZ 85260

Subdivision Name:  
 Lot #:

MCR #:

Property Description: W 375F OF S2 OF LOT 1 EX W 60F TH/OF & EX R/W P/F 98-1095017  
 Section Township Range: 7 3N 5E

Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner: SCC I LIMITED PARTNERHSIP  
 Mailing Address: 15880 N GREENWAY-  
 HAYD..  
 SCOTTSDALE, AZ 85260

Deed #: 970375704  
 Deed Date: 6/3/1997

Sales Price: n/a \*  
 Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**

Tax Year:	2003	2002	2001
Full Cash Value:	\$479,000	\$479,000	\$293,803
Limited Property Value:	\$374,827	\$340,102	\$293,803
Legal Class:	2	2	2
Assessment Ratio:	16%	16%	16%
Assessed FCV	\$76,640	\$76,640	\$47,008
Assessed LPV	\$59,972	\$54,416	\$47,008
Property Use Code:	0032	0032	0032
Tax Area Code:	481400	481400	481400

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New Search**Property Information**[View GIS Maps](#)

Parcel #: 217 - 15 - 033

Property Address: , AZ

Subdivision Name:

Lot #:

MCR #:

Property Description: LOT 7 OR N2 NE4 SW4 NW4 EX E 45F TH/OF

Section Township Range: 7 3N 5E

Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner: WESOLOWSKI EUGENE T JR

Mailing Address: 464 W CHEERY LYNN

Address: PHOENIX, AZ 85013

Deed #: 04092-0071

Sales Price: n/a \*

Deed Date: 12/25/1958

Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**

Tax Year:	2003	2002	2001
Full Cash Value:	\$445,000	\$445,000	\$285,000
Limited Property Value:	\$354,918	\$322,653	\$281,870
Legal Class:	2	2	2
Assessment Ratio:	16%	16%	16%
Assessed FCV	\$71,200	\$71,200	\$45,600
Assessed LPV	\$56,787	\$51,624	\$45,099
Property Use Code:	0004	0004	0004
Tax Area Code:	481400	481400	481400

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New Search**Property Information**[View GIS Maps](#)

Parcel #: 217 - 15 - 945

Property Address: 8900 E RAINTREE CIR RD  
SCOTTSDALE, AZ 85260Subdivision Name: OFFICES AT RAINTREE CORP  
CENTER CONDOMINIUM

Lot #: 8900 MCR #: 50928

Property Description: OFFICES AT RAINTREE CORP CENTER CONDOMINIUM MCR 509-28  
UNIT 8900 TOG WI AN UNDIV .1259% INT IN THE C

Section Township Range: 7 3N 5E

Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner: L AND A REAL ESTATE HOLDINGS LLC

Mailing Address: 8350 E EVANS RD BLDG ..

Deed #: 000265600

Sales Price: n/a \*

Address: SCOTTSDALE, AZ 85260

Deed Date: 4/7/2000

Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**[View Comparables \(COMPS\)](#)

Tax Year:	2003	2002	2001
Full Cash Value:	\$924,949	\$780,393	\$780,393
Limited Property Value:	\$924,949	\$780,393	\$733,570
Legal Class:	1	1	1
Assessment Ratio:	25%	25%	25%
Assessed FCV	\$231,238	\$195,098	\$195,098
Assessed LPV	\$231,237	\$195,098	\$183,393
Property Use Code:			
Tax Area Code:	481400	481400	481400

**Additional Component Information ( for this parcel )**
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[New Search](#)**Property Information**[View GIS Maps](#)

Parcel #: 217 - 15 - 949

Property Address: 8940 E RAINTREE CIR RD  
SCOTTSDALE, AZ 85260Subdivision Name: OFFICES AT RAINTREE CORP  
CENTER CONDOMINIUM

Lot #: 8940 MCR #: 50928

Property Description: OFFICES AT RAINTREE CORP CENTER CONDOMINIUM MCR 509-28  
UNIT 8940 TOG WI AN UNDIV .0778% INT IN THE C

Section Township Range: 7 3N 5E

Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner: YOZIPOVIC PROPERTIES LLC

Mailing Address: 8940 E RAINTREE DR  
SCOTTSDALE, AZ 85260

Deed #: 010304926

Sales Price: n/a \*

Deed Date: 4/16/2001

Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**[View Comparables \(COMPS\)](#)

Tax Year:	2003	2002	2001
Full Cash Value:	\$576,892	\$576,489	\$576,489
Limited Property Value:	\$576,892	\$576,489	\$541,900
Legal Class:	1	1	1
Assessment Ratio:	25%	25%	25%
Assessed FCV	\$144,223	\$144,122	\$144,122
Assessed LPV	\$144,223	\$144,122	\$135,475
Property Use Code:			
Tax Area Code:	481400	481400	481400

**Additional Component Information ( for this parcel )**
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New Search**Property Information**[View GIS Maps](#)

Parcel #: 217 - 15 - 950  
 Property Address: 8950 E RAINTREE CIR RD  
 SCOTTSDALE, AZ 85260

Subdivision Name: OFFICES AT RAINTREE CORP  
 CENTER CONDOMINIUM  
 Lot #: 8950 MCR #: 50928

Property Description: OFFICES AT RAINTREE CORP CENTER CONDOMINIUM MCR 509-28  
 UNIT 8950 TOG WI AN UNDIV .0778% INT IN THE C  
 Section Township Range: 7 3N 5E Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner: RAINTREE 8950 ASSOCIATES LLC  
 Mailing Address: 8129 N 87TH PL  
 SCOTTSDALE, AZ 85258

Deed #: Q10157594  
 Deed Date: 3/1/2001

Sales Price: n/a \*  
 Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**[View Comparables \(COMPS\)](#)

Tax Year:	2003	2002	2001
Full Cash Value:	\$576,892	\$576,489	\$576,489
Limited Property Value:	\$576,892	\$576,489	\$541,900
Legal Class:	1	1	1
Assessment Ratio:	25%	25%	25%
Assessed FCV	\$144,223	\$144,122	\$144,122
Assessed LPV	\$144,223	\$144,122	\$135,475
Property Use Code:			
Tax Area Code:	481400	481400	481400

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New Search**Property Information**[View GIS Maps](#)

Parcel #: 217 - 15 - 951  
 Property Address: 8960 E RAINTREE CIR RD  
 SCOTTSDALE, AZ 85260

Subdivision Name: OFFICES AT RAINTREE CORP  
 CENTER CONDOMINIUM

Lot #: 8960 MCR #: 50928

Property Description: OFFICES AT RAINTREE CORP CENTER CONDOMINIUM MCR 509-28  
 UNIT 8960 TOG WI AN UNDIV .1259% INT IN THE C  
 Section Township Range: 7 3N 5E

Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner: 8960 RAINTREE L L C  
 Mailing Address: 8960 E RAINTREE DR NO..  
 SCOTTSDALE, AZ 85260

Deed #: 010685683

Sales Price: n/a \*

Deed Date: 7/30/2001

Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**[View Comparables \(COMPS\)](#)

Tax Year:	2003	2002	2001
Full Cash Value:	\$924,943	\$780,393	\$780,393
Limited Property Value:	\$924,943	\$780,393	\$733,570
Legal Class:	1	1	1
Assessment Ratio:	25%	25%	25%
Assessed FCV	\$231,238	\$195,098	\$195,098
Assessed LPV	\$231,237	\$195,098	\$183,393
Property Use Code:			
Tax Area Code:	481400	481400	481400

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New Search**Property Information**[View GIS Maps](#)

Parcel #: 217 - 15 - 030-B  
 Property Address: 14724 N 90TH ST  
 SCOTTSDALE, AZ 85260

Subdivision Name:  
 Lot #:

MCR #:

Property Description: E 396F OF GOVERNMENT LOT 17 EX TH PT CONV P/D 89-111467  
 Section Township Range: 7 3N 5E  
 Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner: ARIZONA PUBLIC SERVICE  
 Mailing Address: PO BOX 53999 STA 9282  
 PHOENIX, AZ 85072

Deed #: 860688050

Sales Price: n/a \*

Deed Date: 12/12/1986

Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**[View Comparables \(COMPS\)](#)

Tax Year:	2003	2002	2001
Full Cash Value:	\$472,500	\$349,000	\$145,850
Limited Property Value:	\$265,604	\$196,638	\$145,850
Legal Class:	1	1	1
Assessment Ratio:	25%	25%	25%
Assessed FCV	\$118,125	\$87,250	\$36,463
Assessed LPV	\$66,401	\$49,160	\$36,463
Property Use Code:			
Tax Area Code:	481400	481400	481400

**Additional Component Information ( for this parcel )**
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New Search**Property Information**[View GIS Maps](#)

Parcel #: 215 - 52 - 035-F

Property  
Address

, AZ

Subdivision Name: NORTHSIGHT 2 PAR 1-6

Lot #: 2 MCR #: 31515

Property Description: TH PT NORTHSIGHT 2 MCR 315-15 PARCEL 2 DAF BEG SW COR SD  
PAR TH N 291.11F TH E 212.32F TO PT ON E LN  
Section Township Range: 12 3N 4E Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner: FOUNDERS BANK OF ARIZONA TR

Mailing  
Address 7335 E DOUBLETREE RAN.,  
SCOTTSDALE, AZ 85258

Deed #: 980128376

Sales Price: n/a \*

Deed Date: 2/20/1998

Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**

Tax Year:	2003	2002	2001
Full Cash Value:	\$616,500	\$616,500	\$557,874
Limited Property Value:	\$395,220	\$321,460	\$223,113
Legal Class:	2	2	2
Assessment Ratio:	16%	16%	16%
Assessed FCV	\$98,640	\$98,640	\$89,260
Assessed LPV	\$63,235	\$51,434	\$35,698
Property Use Code:	0021	0021	0021
Tax Area Code:	691400	691400	691400

**Additional Component Information ( for this parcel )**
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New Search**Property Information**[View GIS Maps](#)

**Parcel #:** 215 - 52 - 035-D  
**Property Address:** 14950 N NORTHSIGHT BLVD  
**Subdivision Name:** NORTHSIGHT 2 PAR 1-6  
**Lot #:** 2 **MCR #:** 31515  
**Address:** SCOTTSDALE, AZ 85260

**Property Description:** TH PT NORTHSIGHT 2 MCR 315-15 PT OF PARCEL 2 DAF BEG NW COR SD PAR 2 TH E 457.78F TO TPOB TH CON E 6  
**Section Township Range:** 12 3N 4E **Associated Parcel:**

**Owner Information**[View Tax Statement](#)

**Owner:** UPSIDE LLC  
**Mailing Address:** 7373 E DOUBLETREE RAN.  
**Address:** SCOTTSDALE, AZ 85258  
**Deed #:** 000565591 **Sales Price:** n/a \*  
**Deed Date:** 7/26/2000 **Sales Date:** n/a \*  
 \* Only sales for the last three years are maintained.

**Valuation Information**

Tax Year:	2003	2002	2001
Full Cash Value:	\$1,041,365	\$1,025,206	\$689,978
Limited Property Value:	\$851,164	\$773,785	\$689,978
Legal Class:	1	1	1
Assessment Ratio:	25%	25%	25%
Assessed FCV	\$260,341	\$256,302	\$172,494
Assessed LPV	\$212,791	\$193,446	\$172,495
Property Use Code:	2020	2020	2020
Tax Area Code:	691400	691400	691400

**Additional Component Information ( for this parcel )**
[Valuation](#) [Characteristics](#)
New Search

## Helpful Information:

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New Search**Property Information**[View GIS Maps](#)

Parcel #: 217 - 15 - 687

Property Address: 8810 E PALM RIDGE DR  
SCOTTSDALE, AZ 85260

Subdivision Name: EAGLE POINT LOT 1-105 TR A

Lot #: 23 MCR #: 33647

Property Description: EAGLE POINT MCR 336-47

Section Township Range: 7 3N 5E

Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner: MORTON HERBERT J/BEVERLY J

Mailing Address: 8810 E PALM RIDGE DR  
SCOTTSDALE, AZ 85260

Deed #: 010551915

Sales Price: n/a \*

Deed Date: 6/22/2001

Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**[View Comparables \(COMPS\)](#)

Tax Year:	2003	2002	2001
Full Cash Value:	\$199,500	\$188,500	\$188,500
Limited Property Value:	\$199,500	\$184,586	\$167,805
Legal Class:	3	3	3
Assessment Ratio:	10%	10%	10%
Assessed FCV	\$19,950	\$18,850	\$18,850
Assessed LPV	\$19,950	\$18,459	\$16,781
Property Use Code:	0141	0141	0141
Tax Area Code:	481400	481400	481400

**Additional Component Information ( for this parcel )**
[Valuation](#) [Characteristics](#)
New Search

## Helpful Information:

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New Search**Property Information**[View GIS Maps](#)

Parcel #: 217 - 15 - 688  
 Property Address: 8826 E PALM RIDGE DR  
 SCOTTSDALE, AZ 85260

Subdivision Name: EAGLE POINT LOT 1-105 TR A  
 Lot #: 24 MCR #: 33647

Property Description: EAGLE POINT MCR 336-47  
 Section Township Range: 7 3N 5E

Associated Parcel:

**Owner Information**[View Tax Statement](#)

Owner: ARGIROPOULOS TOM JR  
 Mailing Address: 8826 E PALM RIDGE DR  
 SCOTTSDALE, AZ 85260

Deed #: 980661452  
 Deed Date: 7/30/1998

Sales Price: \$161,900  
 Sales Date: 7/1/1998

**Valuation Information**[View Comparables \(COMPS\)](#)

Tax Year:	2003	2002	2001
Full Cash Value:	\$191,500	\$169,500	\$169,500
Limited Property Value:	\$186,450	\$169,500	\$169,072
Legal Class:	3	3	3
Assessment Ratio:	10%	10%	10%
Assessed FCV	\$19,150	\$16,950	\$16,950
Assessed LPV	\$18,645	\$16,950	\$16,907
Property Use Code:	0141	0141	0141
Tax Area Code:	481400	481400	481400

**Additional Component Information ( for this parcel )**
[Valuation](#) [Characteristics](#)
New Search

## Helpful Information:

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New Search**Property Information**[View GIS Maps](#)

Parcel #: 217 - 15 - 689

Property Address: 8842 E PALM RIDGE DR  
SCOTTSDALE, AZ 85260

Subdivision Name: EAGLE POINT LOT 1-105 TR A

Lot #: 25 MCR #: 33647

Property Description: EAGLE POINT MCR 336-47

Section Township Range: 7 3N 5E

Associated Parcel:

**Owner Information**[View Tax Statement](#)Owner: DUNDON RICHARD/DONNA  
Mailing Address: 8842 E PALM RIDGE DR  
SCOTTSDALE, AZ 85260

Deed #: 920233967

Sales Price: n/a \*

Deed Date: 4/30/1992

Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**[View Comparables \(COMPS\)](#)

Tax Year:	2003	2002	2001
Full Cash Value:	\$245,000	\$211,500	\$211,500
Limited Property Value:	\$232,650	\$211,500	\$210,100
Legal Class:	3	3	3
Assessment Ratio:	10%	10%	10%
Assessed FCV	\$24,500	\$21,150	\$21,150
Assessed LPV	\$23,265	\$21,150	\$21,010
Property Use Code:	0141	0141	0141
Tax Area Code:	481400	481400	481400

**Additional Component Information ( for this parcel )**
[Valuation](#) [Characteristics](#)
New Search

Helpful Information:

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New Search**Property Information**[View GIS Maps](#)

Parcel #: 215 - 52 - 035-J

Property

Subdivision Name: NORTHSIGHT 2 PAR 1-6

Address , AZ

Lot #: 2

MCR #: 31515

**Property Description:** NORTHSIGHT 2 MCR 315-15 PARCEL 2 EX TH PT DAF COM NW COR SD  
PAR TH S 631.19F TH E 330.22F TO TPOB TH
**Section Township Range:** 12 3N 4E**Associated Parcel:****Owner Information**[View Tax Statement](#)**Owner:** NORTHSIGHT VILLAGE III L L C**Mailing Address** 550 N SCOTTSDALE RD

TEMPE, AZ 85281

**Deed #:** 000170523**Sales Price:** n/a \***Deed Date:** 3/7/2001**Sales Date:** n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**

Tax Year:	2003	2002	2001
Full Cash Value:	\$659,000		
Limited Property Value:	\$419,426		
Legal Class:	2		
Assessment Ratio:	16%		
Assessed FCV	\$105,440		
Assessed LPV	\$67,108		
Property Use Code:	0021		
Tax Area Code:	691400		

**Additional Component Information ( for this parcel )**
[Valuation](#)   [Characteristics](#)
New Search

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New Search**Property Information**[View GIS Maps](#)

Parcel #: 217 - 15 - 690

Property Address: 8858 E PALM RIDGE DR  
SCOTTSDALE, AZ 85260

Subdivision Name: EAGLE POINT LOT 1-105 TR A

Lot #: 26 MCR #: 33647

Property Description: EAGLE POINT MCR 336-47

Section Township Range: 7 3N 5E

Associated Parcel:

**Owner Information**[View Tax Statement](#)Owner: RINALDI ANTONIETTA TR  
Mailing Address: 8858 E PALM RIDGE DR  
SCOTTSDALE, AZ 85260

Deed #: 000142300

Sales Price: n/a \*

Deed Date: 2/28/2000

Sales Date: n/a \*

\* Only sales for the last three years are maintained.

**Valuation Information**[View Comparables \(COMPS\)](#)

Tax Year:	2003	2002	2001
Full Cash Value:	\$198,500	\$172,000	\$172,000
Limited Property Value:	\$189,200	\$172,000	\$172,000
Legal Class:	3	3	3
Assessment Ratio:	10%	10%	10%
Assessed FCV	\$19,850	\$17,200	\$17,200
Assessed LPV	\$18,920	\$17,200	\$17,200
Property Use Code:	0141	0141	0141
Tax Area Code:	481400	481400	481400

**Additional Component Information ( for this parcel )**Valuation [Characteristics](#)New Search

## Helpful Information:

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**OPENING STATEMENT**


COMMISSIONER OSTERMAN read the opening statement which describes the role of the Planning Commission and the procedures used in conducting this meeting.

CHAIRMAN GULINO stated cases 29-ZN-2000#2 and 4-UP-1999#3 have been continued.

COMMISSIONER HEITEL MOVED TO CONTINUE CASES 29-ZN-2000#2 AND 4-UP-1999#3 TO THE DECEMBER 11, 2002 PLANNING COMMISSION MEETING. SECOND BY COMMISSIONER OSTERMAN.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).

**EXPEDITED AGENDA**

- 
2. **22-UP-2002 (Danny's Carwash - Raintree)** request by Deutsch Associates, applicant, CRIX Real Estate, owner, for a conditional use permit for a new car wash on a 2.6 +/- acre parcel located 8680 E Raintree Drive with Central Business District (C-2) zoning.
  3. **23-UP-2002 (Danny's Carwash - Raintree)** request by Deutsch Associates, applicant, CRIX Real Estate, owner for a conditional use permit for a new service station on a 2.6 +/- acre parcel located 8680 E Raintree Drive with Central Business District (C-2) zoning.

(CHAIRMAN GULINO DECLARED A CONFLICT ON CASES 22-UP-2002 AND 23-UP-2002 AND DID NOT PARTICIPATE IN THE DISCUSSION OR THE VOTE.)

MR. VERSCHUREN presented cases 22-UP-2002 and 23-UP-2002 as per the project coordination packet. He stated there is a minor modification to the site plan the detailed bays have been moved up behind the convenience store. They have checked it out and it meets all of the circulation conditions. On attachment No. 5, Page 1, under Parking Lot and Site Lighting underneath the condition it reads: "...the convenience store front shall exceed 2.5 foot-candles." The word not was left out. It should read: "...the convenience store front shall not exceed 2.5 foot-candles". Staff recommends approval, subject to the stipulations.

COMMISSIONER HENRY MOVED TO FORWARD CASE 22-UP-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL INDICATING IT DOES CONFORM TO THE USE PERMIT CRITERIA. SECOND COMMISSIONER BY HEITEL.



THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).

COMMISSIONER HENRY MOVED TO FORWARD CASE 23-UP-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL INDICATING IT DOES CONFORM TO THE USE PERMIT CRITERIA. SECOND BY COMMISSIONER STEINBERG.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).

2A. 5400 FRESH ELFS.  
2A. STONE VONDER.  
2A. STONEFLIGHT WINDOW SYSTEM  
31. ELFS. PENAL.  
31. METAL CANYON.  
34. OVER-HEAD ROLL-UP DOOR.  
34. CONCRETE STAIRS.  
3A. ELFS. PARADET COPING.  
37. CLEAR GLASS IN ALUMINUM FRAME.



- **Industrial Design**
- **Planning**
- **Project Management**



RAINTREE AND 101  
SCOTTSDALE, ARIZONA



Carolyn

DAWN'S FAMILY CARE (DA 0216300) 08-19-02 USE PRESENT ADDRESS ONLY

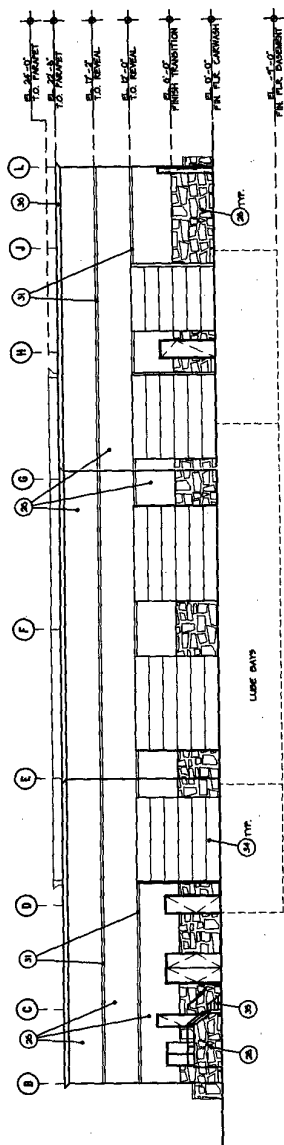
TITLE	DATE	BY	REMARKS
CARWASH ELEVATIONS			

A4-1

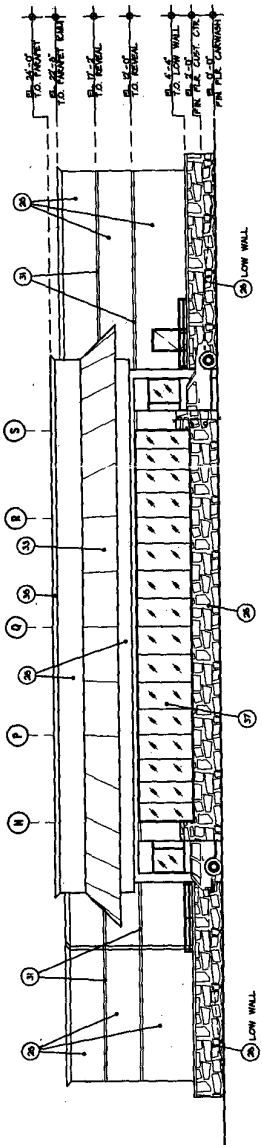
22-UP-2002

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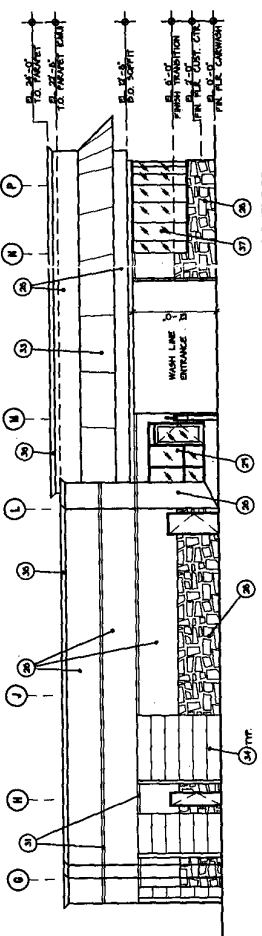
**ATTACHMENT #10**



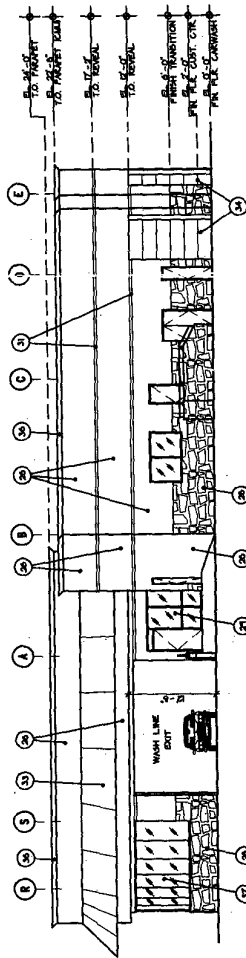
**1 CARWASH NORTH-WEST ELEVATION**



## CARWASH SOUTH-EAST ELEVATION



**3 CARWASH SOUTH-WEST ELEVATION**  
SCALE: 1/8"=1'-0"



④ **CARWASH NORTH-EAST ELEVATION**  
SCALE: 1/8"=1'-0"



DATE: 08-19-02  
BY: [Signature]  
CHECKED: [Signature]  
APPROVED: [Signature]



RAINTREE AND 101  
SCOTTSDALE, ARIZONA

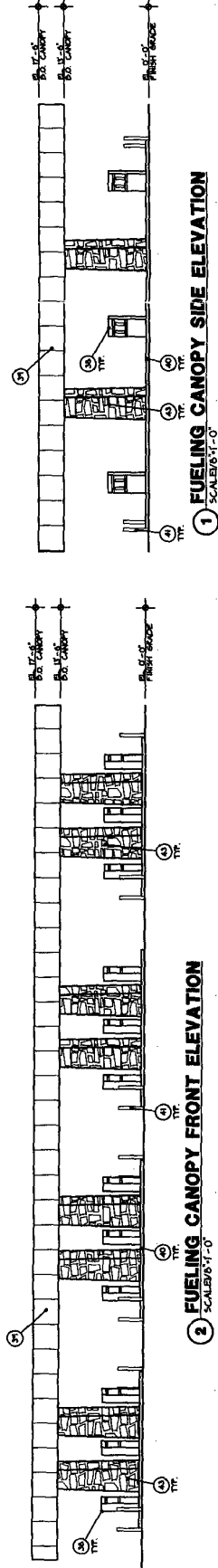


DARTMOUTH ASSOCIATES, INC. 08-19-02 USE PERMIT SUBMITTAL SET

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BY	[Signature]
CHECKED	[Signature]
APPROVED	[Signature]
SCALE	AS SHOWN
PROJECT	RAINTREE AND 101
LOCATION	SCOTTSDALE, ARIZONA
DATE	08-19-02
BY	[Signature]
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APPROVED	[Signature]
SCALE	AS SHOWN
PROJECT	RAINTREE AND 101
LOCATION	SCOTTSDALE, ARIZONA

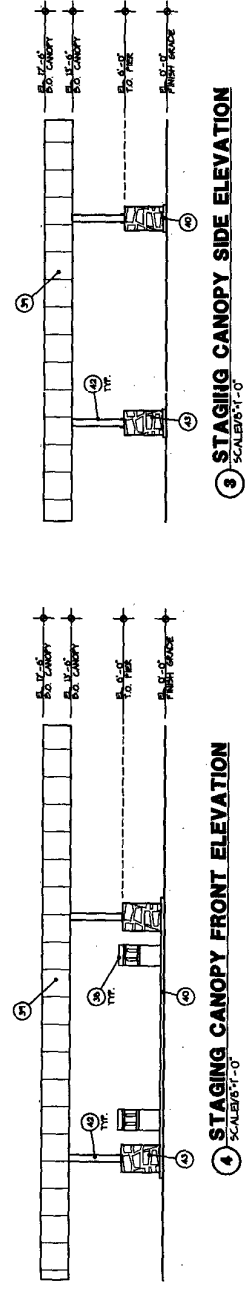
A4-3  
22-UP-2002  
9/18/2002

ATTACHMENT #11



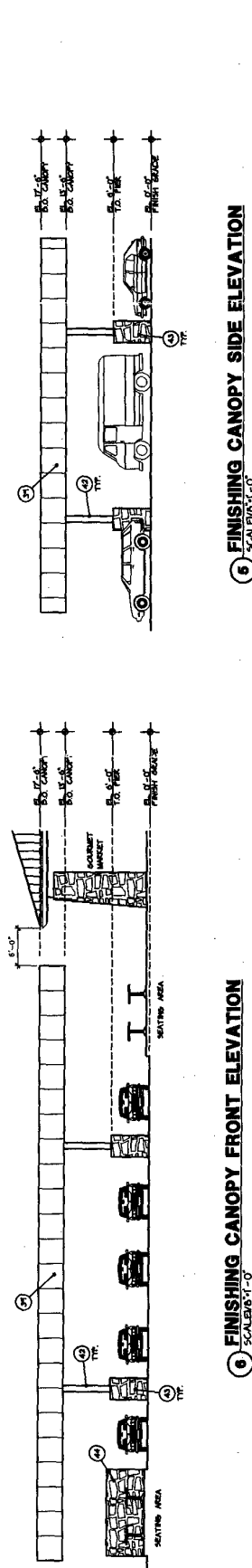
2 FUELING CANOPY FRONT ELEVATION  
SCALE: 1/8" = 1'-0"

1 FUELING CANOPY SIDE ELEVATION  
SCALE: 1/8" = 1'-0"



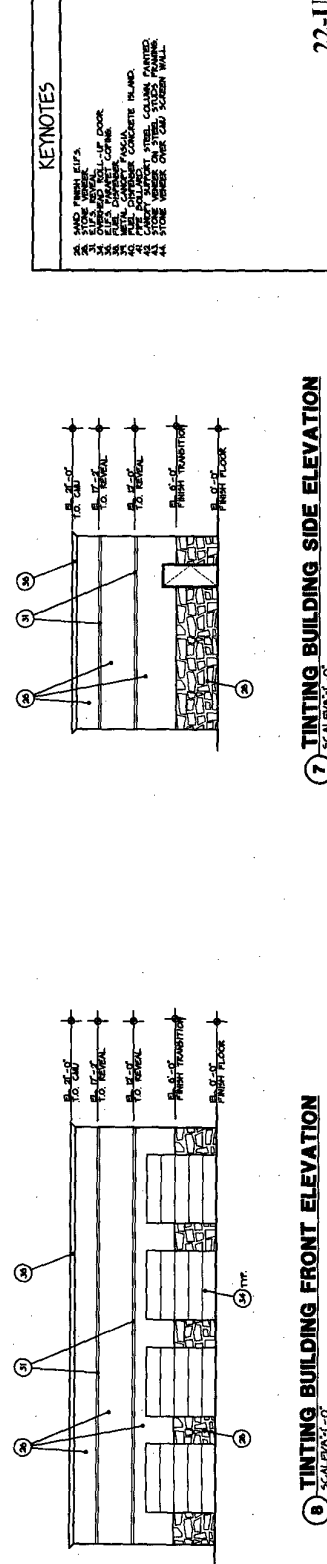
4 STAGING CANOPY FRONT ELEVATION  
SCALE: 1/8" = 1'-0"

3 STAGING CANOPY SIDE ELEVATION  
SCALE: 1/8" = 1'-0"



6 FINISHING CANOPY FRONT ELEVATION  
SCALE: 1/8" = 1'-0"

5 FINISHING CANOPY SIDE ELEVATION  
SCALE: 1/8" = 1'-0"



8 TINTING BUILDING FRONT ELEVATION  
SCALE: 1/8" = 1'-0"

7 TINTING BUILDING SIDE ELEVATION  
SCALE: 1/8" = 1'-0"

KEYNOTES

1. MAINTAIN EXISTING  
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100. EXISTING CONCRETE

[illegible]

LANDSCAPE PLAN APPROVED CITY OF SCOTTSDALE	CASE NUMBER	APPROVED BY	DATE
	CONSTRUCTION AND INSTALLATION SHALL BE IN ACCORDANCE WITH THIS PLAN AND ANY AND ALL DETAIL WILL REQUIRE REAPPROVAL. LANDSCAPE INSTALLATION TO BE APPROVED BY CITY OF SCOTTSDALE INSPECTION SERVICES BEFORE CERTIFICATE OF OCCUPANCY IS ISSUED.		

ALL LANDSCAPE AREAS AND MATERIALS SHALL BE MAINTAINED IN A HEALTHY, NEAT, CLEAN AND WELL-KEPT CONDITION. THE MAINTENANCE OF THE BEAUTY AND NEATNESS OF THE PROPERTY IS THE RESPONSIBILITY OF THE PROPERTY OWNER.



SYMBOL	BOTANICAL/COMMON NAME	SIZE	QUANTITY	REMARKS	SYMBOL	BOTANICAL/COMMON NAME	SIZE	QUANTITY	REMARKS
1	ACACIA SALICINA WILLOW ACACIA	24" BOX	6	STANDARD TRUNK STAKE AS REQUIRED	1	ADONIS DISSECTA ACONITUM	6 GAL	54	1 GPH-ENTRITER
2	CERCIDIPHYLLON SILVERBERRY	24" BOX	28	MULTI-TRUNK STAKE AS REQUIRED	2	CAREX GRANATA BAGSARD CACTUS	6" MEASUR	10	1 GPH-ENTRITER
3	CONIFER PALM BLUE PALM	24" BOX	11	STANDARD TRUNK STAKE AS REQUIRED	3	FOURCROUS COTILLON	5 GAL	10	1 GPH-ENTRITER
4	PROPIGOS GLODOLIA HAWKWOOD	5 GAL	12	STANDARD TRUNK STAKE AS REQUIRED	4	SEALOWE SEALOWE	1 GAL	10	1 GPH-ENTRITER
5	THORNLESS HONEY SUGAR	5 GAL	100	1 GPH-ENTRITER	5	SALEA PALM TRACATA PALM TRACATA	1 GAL	250	1 GPH-ENTRITER
6	BICELLA TAPSCALA TAPSCALA	5 GAL	36	1 GPH-ENTRITER	6	LANTANA SP. NEW GOLF	1 GAL		
7	CARLEAFALIA PALM CARLEAFALIA	5 GAL	40	1 GPH-ENTRITER	7	MINUTIA MINUTIA	1/2 INCREASED		2 INCREASED ALL LANTANA AND CARLEAFALIA
8	LEUCODENDRON LEUCODENDRON	5 GAL	40	1 GPH-ENTRITER	8	SEAR-SEAR GRASS SEAR-SEAR GRASS	1/2 INCREASED		ALL PLANTS CUT ON PLANTS
9	LEUCODENDRON LEUCODENDRON	5 GAL	70	1 GPH-ENTRITER	9	SEAR-SEAR GRASS SEAR-SEAR GRASS	1/2 INCREASED		ALL PLANTS CUT ON PLANTS
10	LEUCODENDRON LEUCODENDRON	5 GAL	134	1 GPH-ENTRITER	10	SEAR-SEAR GRASS SEAR-SEAR GRASS	1/2 INCREASED		ALL PLANTS CUT ON PLANTS

SYMBOL	BOTANICAL / COMMON NAME
--------	-------------------------

THREAT	AGENCY	STATUS	LOCATION	THREAT TYPE	THREAT DESCRIPTION	THREAT STATUS	THREAT TYPE	THREAT DESCRIPTION	THREAT STATUS
1	AGENCY 1	24" BOX	1	STANDARD TRAIL	STANDARD TRAIL	1	100% BATTERY	100% BATTERY	100% BATTERY
2	AGENCY 2	24" BOX	2	STANDARD TRAIL	STANDARD TRAIL	2	100% BATTERY	100% BATTERY	100% BATTERY
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97	AGENCY 97	24" BOX	97	STANDARD TRAIL	STANDARD TRAIL	97	100% BATTERY	100% BATTERY	100% BATTERY
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99	AGENCY 99	24" BOX	99	STANDARD TRAIL	STANDARD TRAIL	99	100% BATTERY	100% BATTERY	100% BATTERY
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# City Council Report



MEETING DATE: January 7, 2003

ITEM NO. 10

GOAL: Coordinate Planning to Balance Infrastructure

## SUBJECT

Elite Fitness

## REQUEST

Request to approve a conditional use permit for a health studio on a .83 +/- acre parcel located at 7120 E Indian School Road with Central Business District (C-2) zoning.

24-UP-2002

### Key Items for Consideration:

- On-site parking is sufficient for the proposed use.
- Use will not generate an unusual volume of traffic.

## OWNER

Richard Rodger  
602-221-1997

## APPLICANT CONTACT

Steven Spanos  
Elite Fitness  
480-990-0884

## LOCATION

7120 E Indian School Rd

## BACKGROUND

### Zoning.

The site is zoned Central Business District (C-2).

### General Plan.

The General Plan Land Use Element designates the property as Residential/Hotel—Intermediate development type (RH-2). This category is intended for residential and resort hotel uses, and development that will enhance these uses and provide an attractive draw for downtown.

### Context.

The site is located west of Scottsdale Road, and north of Indian School Road. The surrounding property is zoned C-2 (to the west) and Downtown (D/OC-1 to the south, D/OC-2 to the north and D/OR-2 PCD to the east).

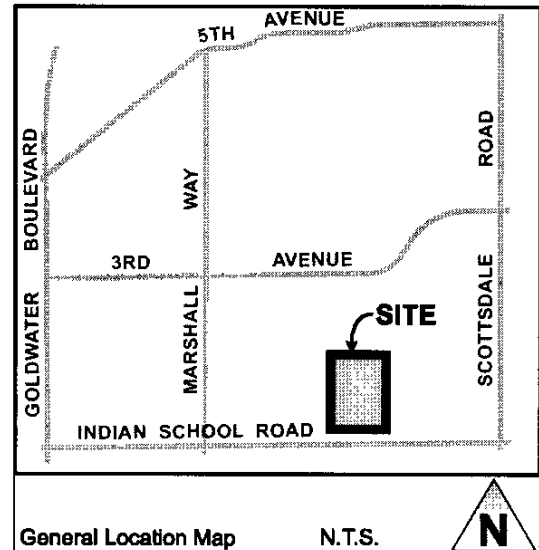
## APPLICANT'S PROPOSAL

### Goal/Purpose of Request.

To allow for a woman's health studio providing weight training, free weights, machines, cardio equipment, shower facilities, retail, storage and office areas.

### Key Issues.

- Parking provided on-site is sufficient for the proposed health studio. The applicant will obtain one parking credit by providing ten bicycle spaces, and two credits by providing shower stalls.
- Trip generation analysis indicates that the commercial site can accommodate the anticipated traffic generated from this use.



(Continued)

Page 1

**Community Impact.**

Provides an additional health studio option in the downtown area. No adverse impacts anticipated.

**Traffic.**

The approximately 5,000 square foot health studio use is proposed for an existing commercial structure on the north side of Indian School Road, which is a four-lane roadway. The site is accessed from two existing driveways to Indian School Road, one with a full median break.

The peak use hours for the health studio are anticipated to be from 7 to 9 AM and from 6 to 8 PM. The Institute of Transportation Engineers (ITE), Trip Generation Manual, 6th Edition indicates that a health club generates 4.3 trips per 1000 square feet of gross floor area in the peak hour. Using this criterion, the proposed health studio would generate 22 trips in the peak hour. The ITE sample data is based on the example of a much larger facility, therefore the actual volume of trips generated with the Elite Fitness use could be less. However, assuming 22 trips within the peak hour, the impact to Indian School Road from this use should not be significant.

**Parking.**

- The health studio use requires 23 parking spaces. With the health studio use, a total of 59 spaces are needed for the overall site and 56 spaces exist. The applicant will receive one parking credit by providing ten additional bicycle spaces and two parking credits by providing shower stalls with the project. These parking credits will satisfy the additional three parking spaces required for the site.

**Development information.**

- *Existing Use:* Retail and Office Use
- *Buildings/Description:* One existing two-story building
- *Parcel Size:* 36,290 square feet (.83 acres)
- *Building Height Allowed:* 36 feet
- *Existing Building Height:* Unreported. Appears less than 36 feet.
- *Overall Building Floor Area:* 12,431 square feet
- *Health Studio Gross Floor Area (Suites B and J):* 5,142 square feet

**Policy implications.**

Will allow a health studio within a C-2 zoning district.

**Use Permit Criteria.**

Conditional use permits, which may be revocable, conditional, or valid for a specified time period, may be granted when expressly permitted only after the Planning Commission has made a recommendation and the City Council has found as follows:

- A. That the granting of such conditional use permit will not be materially

(Continued)

Page 2

detrimental to the public health, safety or welfare. In reaching this conclusion, the Planning Commission and the City Council's consideration shall include, but not be limited to, the following factors:

1. Damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination.
  - *The proposed use is not anticipated to create any damage or nuisance.*
2. Impact on surrounding areas resulting from an unusual volume or character of traffic.
  - *The use is not anticipated to generate an unusual volume or character of traffic.*
3. There are no other factors associated with this project that will be materially detrimental to the public.
  - *No other factors were identified that could be materially detrimental to the public.*
- B. The characteristics of the proposed conditional use are reasonably compatible with the types of uses permitted in the surrounding areas.
  - *The proposed use appears reasonably compatible with the retail, office and services uses within the area.*
- C. The additional conditions specified in Section 1.403, as applicable, have been satisfied.
  - *No additional conditions are specified in the zoning code.*

**Community involvement.**

The applicant provided a letter dated September 24, 2002 providing notice to the other building tenants of the proposed use. The applicant indicated that adjacent tenants are supportive of the use and have not voiced any opposition.

**OPTIONS AND  
STAFF  
RECOMMENDATION**

**Recommended Approach:**

Staff and Planning Commission recommend approval of the use permit subject to the attached stipulations.

**Planning Commission.**

The Planning Commission heard this case on November 13, 2002. The item was on the consent agenda, and no comments were made or received.

Planning Commission recommends approval, 6-0.

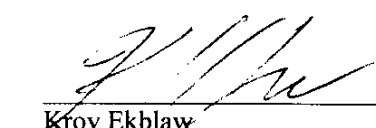
**RESPONSIBLE  
DEPT(S)**

**Planning and Development Services Department**  
Current Planning Services

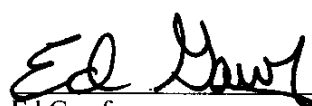
**STAFF CONTACT(S)**

Suzanne Gunderman  
Senior Planner  
480-312-7087  
E-mail: [sgunderman@ci.scottsdale.az.us](mailto:sgunderman@ci.scottsdale.az.us)

**APPROVED BY**

  
Kroy Ekblaw  
Planning and Development Services General Manager

12 / 1 /  
13 02  
Date

  
Ed Gawf  
Deputy City Manager

12/13/02  
Date

**ATTACHMENTS**

1. Applicant's Narrative
2. Context Aerial
- 2A. Aerial Close-Up
3. Land Use Map
4. Zoning Map
5. Stipulations
6. Citizen Involvement
7. November 13, 2002 Planning Commission Minutes
8. Site Plan

☐ Rezoning
 ☐ Other  
☒ Use Permit  
☐ Development Review  
☐ Master Sign Programs  
☐ Variance

Case # 1483-PA-02  
 Project Name Elite Fitness  
 Location 7120 E Indian School  
 Applicant Dawn Aguilar

**SITE DETAILS**

Proposed/Existing Zoning: C-2  
 Use: \_\_\_\_\_  
 Parcel Size: \_\_\_\_\_  
☐ Gross Floor Area ☐ Total Units: \_\_\_\_\_  
☐ Floor Area Ratio ☐ Density: \_\_\_\_\_  
 Parking Required: 55 total in center  
 Parking Provided: 58 provided  
 # Of Buildings: 1  
 Height: \_\_\_\_\_  
 Setbacks: N- \_\_\_\_\_ S- \_\_\_\_\_  
 E- \_\_\_\_\_ W- \_\_\_\_\_

**In the following space, please describe the project or the request**

Elite Fitness for women is an exclusive health studio located at 7120 E Indian School Rd. Accessory operation will be 5:00 a.m. to 9:30 p.m. M-F. Saturday 7:00 a.m. to 7:00 p.m. Closed Sundays.  
 Parking for my use is provided on site as the center has 58 total spaces and the entire center needs 55. This is a full service facility providing weight training through free weights, machines, cardio equipment, shower facilities.





Q.S.  
17-44

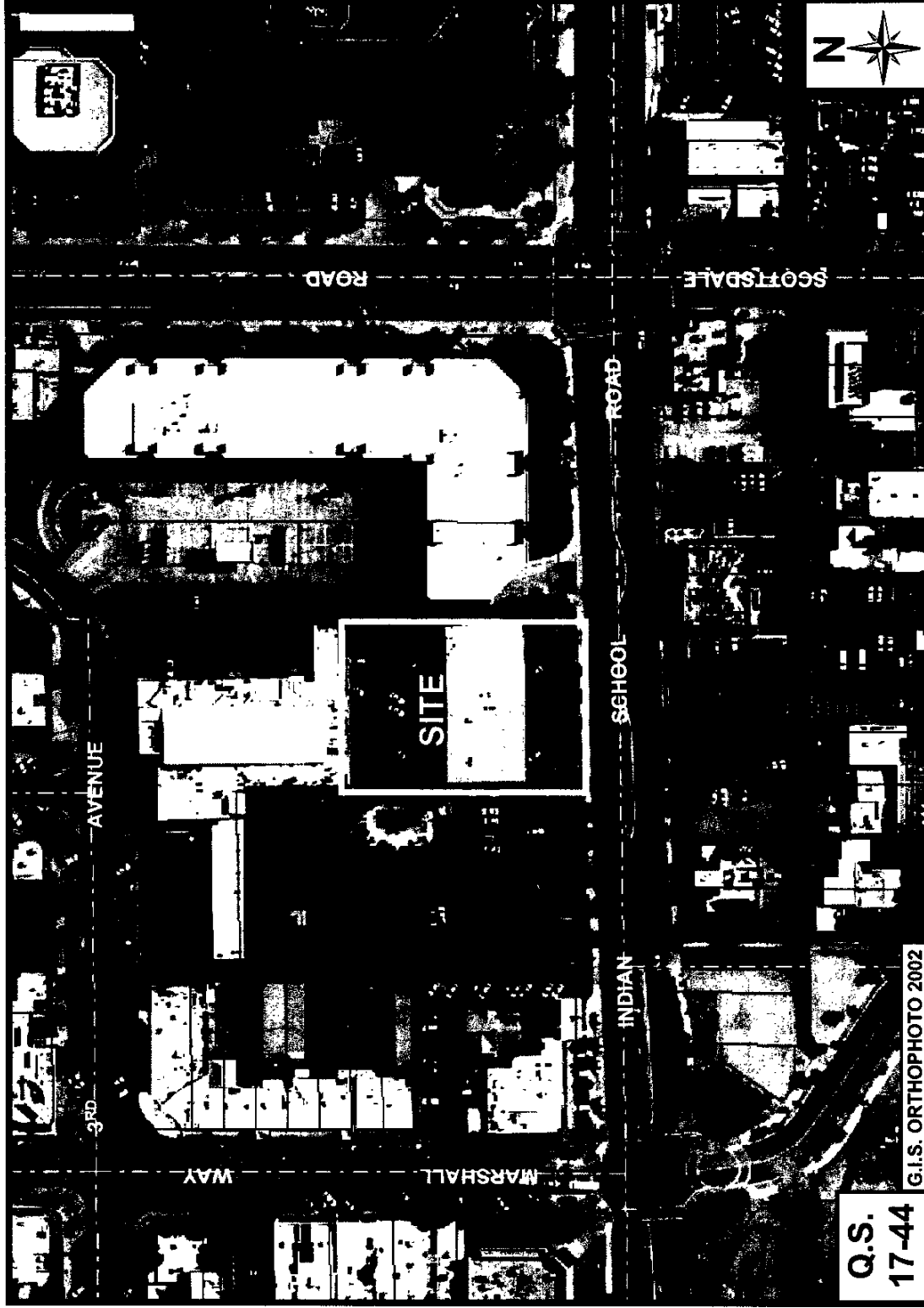
G.I.S. ORTHOPHOTO 2002

Elite Fitness

24-UP-2002

ATTACHMENT #2





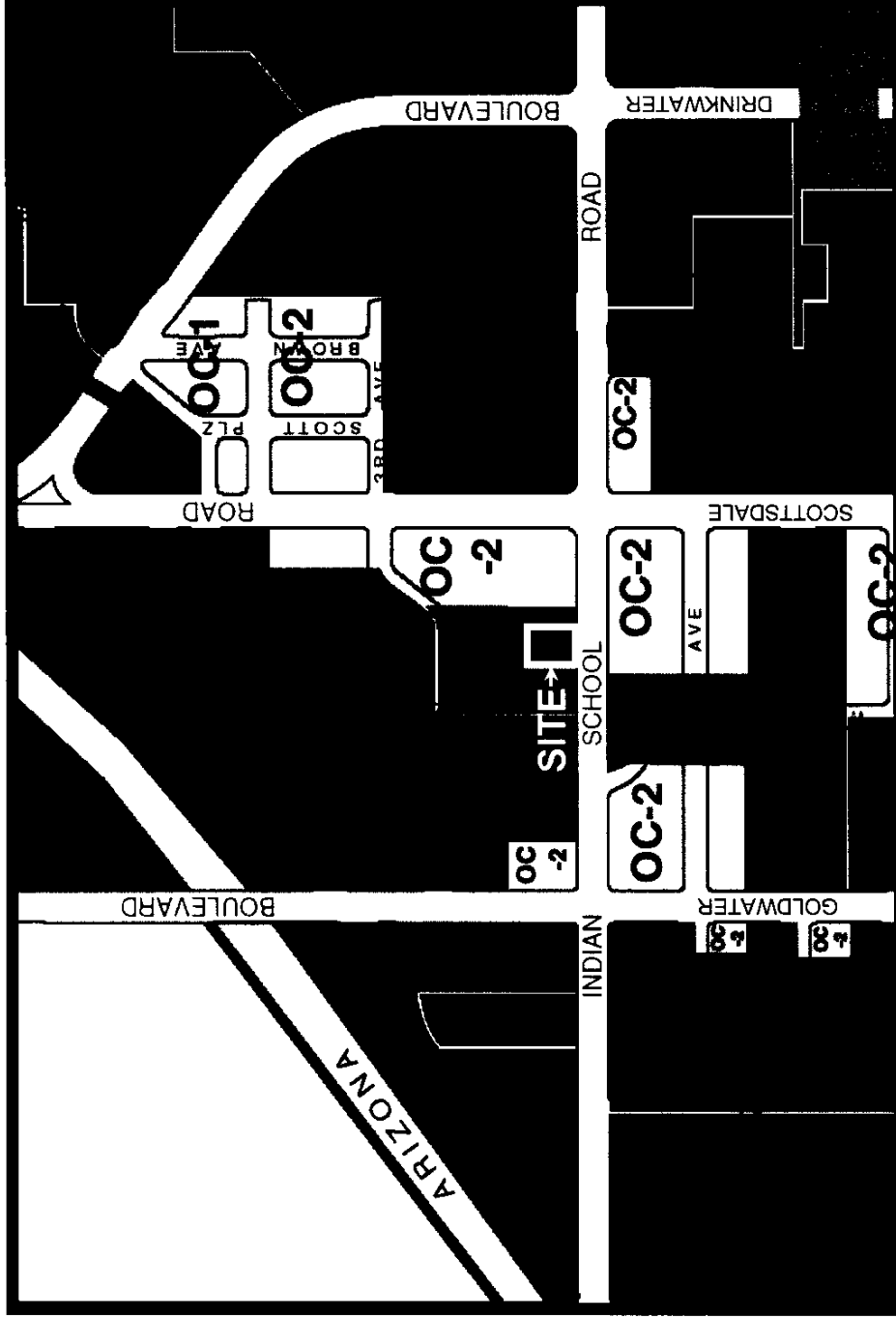
24-UP-2002

Elite Fitness

ATTACHMENT #2A

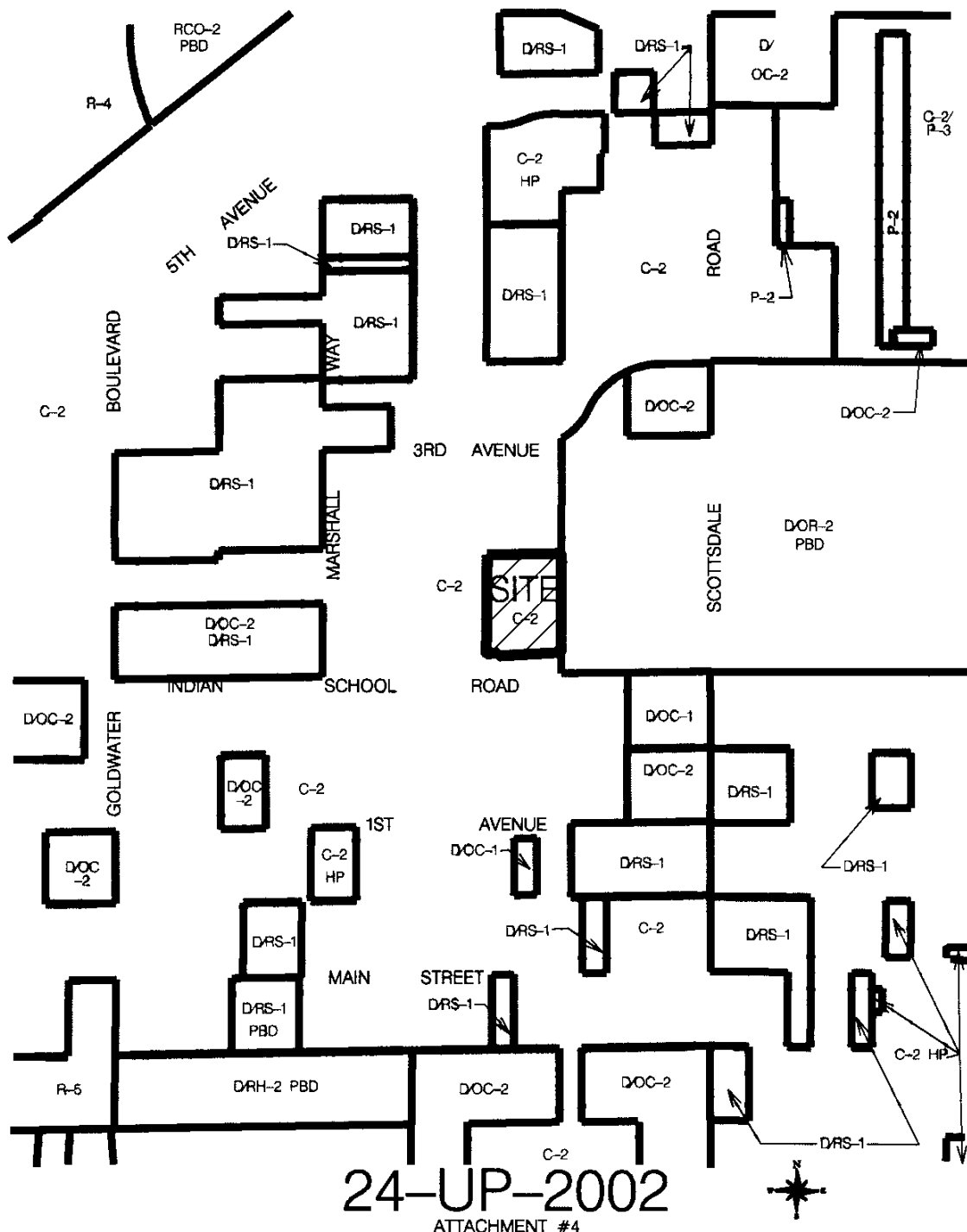


# Downtown General Plan



- Retail Specialty
- Office Commercial
- Civic Center
- Office Residential
- Residential/Hotel
- Regional Commercial/Office
- Residential High Density
- Medical





24-UP-2002  
ATTACHMENT #4



## **STIPULATIONS FOR CASE 24-UP-2002**

### **PLANNING/ DEVELOPMENT**

1. **CONFORMANCE TO DEVELOPMENT SUBMITTAL.** Development shall conform to the site plan/floor plan submitted by Sixty First Place Architects and dated September 9, 2002. These stipulations take precedence over the above-referenced site plan. Any proposed significant change, as determined by the Zoning Administrator, shall be subject to subsequent public hearings before the Planning Commission and City Council.
2. **PARKING.** Applicant shall provide a total of ten (10) bicycle parking spaces on the site to receive one (1) vehicular parking space credit.



September 24, 2002

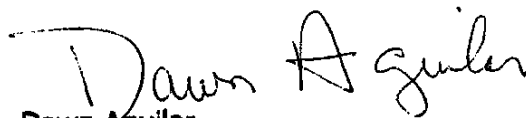
Dear Neighbor:

Elite Fitness for Women is applying for a conditional use permit through the City of Scottsdale to operate a health studio. Health Studios are an allowed use in the zoning district of C-2 with a conditional use permit. The City of Scottsdale has asked us to notify you of our pending application in the event that you may have questions for the city or us during our application process.

Elite Fitness for Women is an exclusive health studio providing a unique fitness environment for women, creating an atmosphere for women to replenish their mental and physical well-being. Our hours of operation will be 5:00am to 9:00pm Monday through Friday, Saturday 7am-7pm, Sunday-closed. The busiest hours of operation will be 5:00am to 9:00am and 6:00pm to 8:00pm.

If any questions regarding our operation or would like to visit, please call me at 480-990-0884 at our membership presale office.

Sincerely,

A handwritten signature in black ink that reads "Dawn Aquilar". The signature is fluid and cursive, with the first name "Dawn" being larger and more prominent than the last name "Aquilar".

Dawn Aquilar  
Owner of Elite Fitness



**CHAIRMAN GULINO** stated he heard on the radio that there was a live band there on opening night. He inquired if that was a special event. Mr. Verschuren replied the Applicant pulled a special event permit for that event and went through the proper channels to obtain a permit.

- 7. 24-UP-2002 (Elite Fitness) request by Elite Fitness, applicant, Richard Rodger, owner, for a conditional use permit for a health studio on a .83 +/- acre parcel located at 7120 E Indian School Road with Central Business District (C-2) zoning.

**MS. GUNDERMAN** presented this case as per the project coordination packet. Staff recommends approval subject to the attached stipulations.

**COMMISSIONER STEINBERG** inquired if the second floor would be used for large groups such as yoga and if so is there sufficient parking. Ms. Gunderman replied the use permit is for the first and second floor. The second floor would be used for office space and some activity like yoga. She stated there is sufficient parking for this facility.

8. 18-ZN-2002 (McDowell Mountain Business Center) request by Archicon LC, applicant, General's Partners #11, owner, to rezone from Single Family Residential, Planned Commercial District (R1-35 PCD) to Industrial Park, Planned Commercial District (I-1 PCD) on a 14+/- acre parcel located at the southeast corner of 90th Street & Bahia Drive.

**MR. WARD** presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

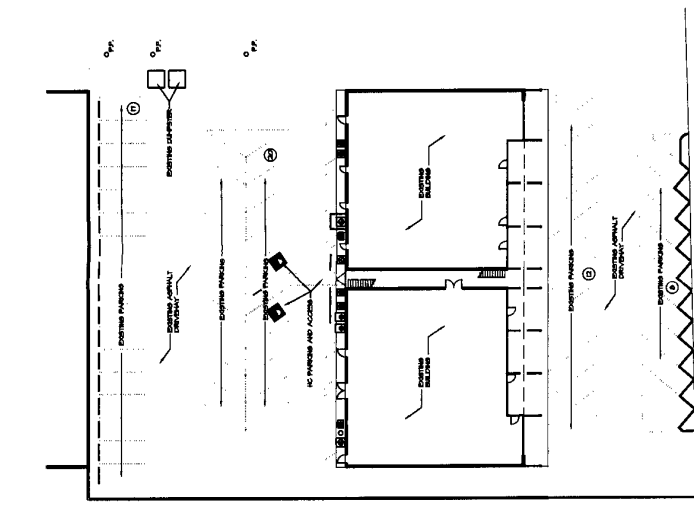
→ **COMMISSIONER OSTERMAN MOVED TO FORWARD CASES 21-UP-2002 AND 24-UP-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL INDICATING IT DOES CONFORM TO THE USE PERMIT CRITERIA. HE ALSO MOVED TO FORWARD CASE 18-ZN-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSION HEITEL.**

**THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).**

#### **REGULAR AGENDA**


9. 20-UP-2002 (McDowell Mountain Business Center) request by Archicon LC, applicant, General's Partners #11, owner, for a conditional use permit for automotive and boat assembly and reassembly, excluding general repairs and maintenance on a 1+/- acre parcel located at the southwest corner of 91st Street and Bahia Drive.

**MR. WARD** presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.



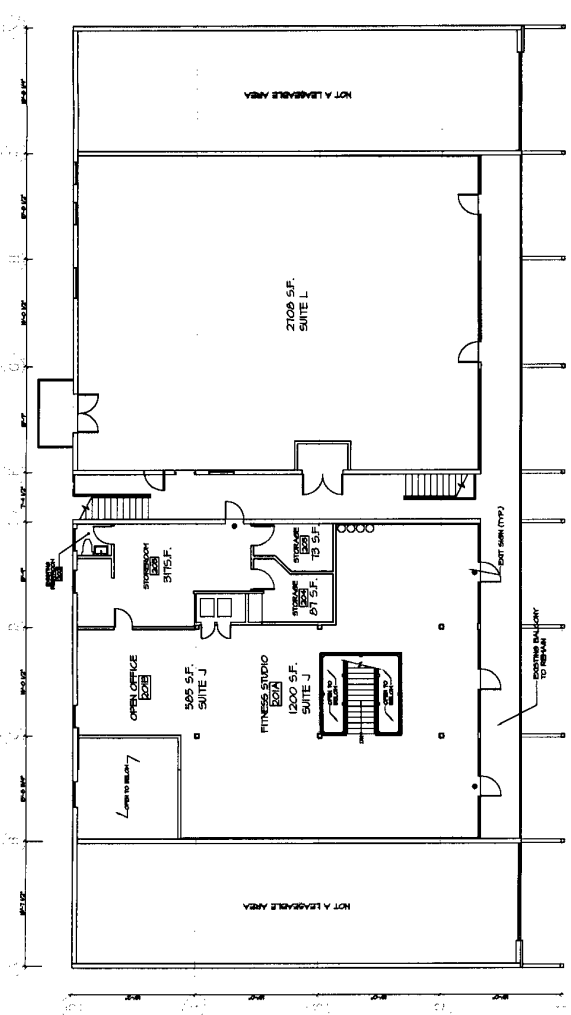
3 SITE PLAN 1/20" = 1'-0"

SCOTTSDALE ROAD

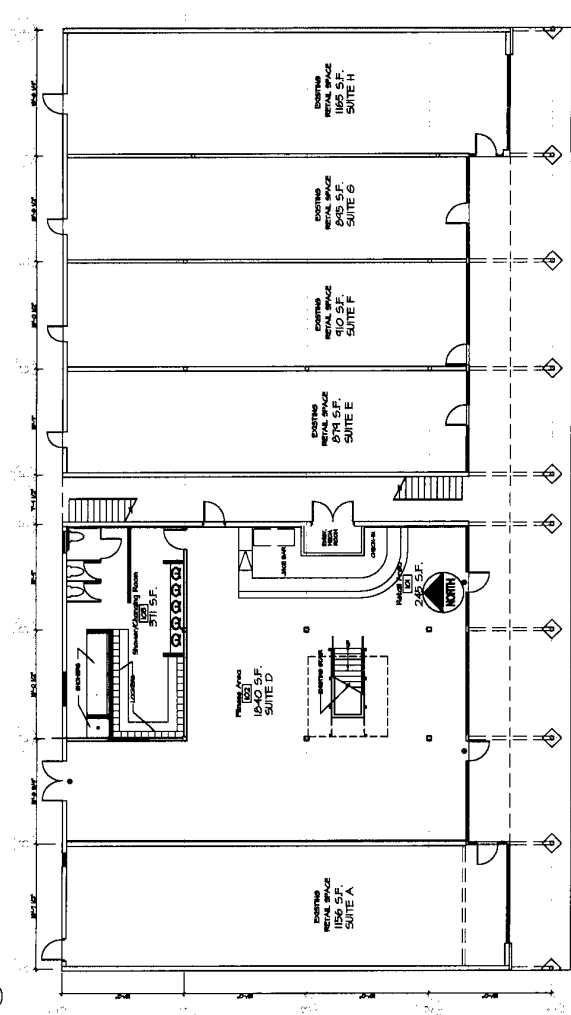


SUITE A	RETAIL	1156 S.F.	1156 /250 = 4.62	5
SUITE B	RETAIL	245 S.F.	245/250 = .98	1
SUITE B	FITNESS	2211 S.F.	2211/150 = 14.74	15
SUITE C	RETAIL	874 S.F.	874/250 = 3.51	4
SUITE E	RETAIL	945 S.F.	945/250 = 3.78	4
SUITE F	RETAIL	945 S.F.	945/250 = 3.78	4
SUITE H	RETAIL	1155 S.F.	1155/250 = 4.62	5
SUITE I	OFFICE	565 S.F.	565/300 = 1.88	2
SUITE J	OFFICE	1200 S.F.	1200/150 = 8	8
SUITE J	FITNESS	471 S.F.	471/300 = 1.57	2
SUITE J	STORAGE	2108 S.F.	2108/300 = 7.02	10
SUITE L	OFFICE			
Total Parking Required				54
Parking Provided				56
Credit for shower stall				2
Credit for 10 Bicycle spaces				2
Total Parking Provided				54

24-UP-2002  
ATTACHMENT #8



2 SECOND FLOOR PLAN  
1/8" = 1'-0"



1 FIRST FLOOR PLAN  
1/8" = 1'-0"

# CITY COUNCIL REPORT



MEETING DATE: 01/07/2003    ITEM No. 11    GOAL: Transportation

## SUBJECT

Scottsdale Airport Pavement Preservation Capital Project to be paid for (90%) by Arizona Department of Transportation (ADOT)

## REQUEST

Consider adoption of Resolution No. 6188 to authorize Intergovernmental Agreement (IGA) No. 2002-138-COS between ADOT and the City of Scottsdale for the purpose of conducting pavement preservation work at Scottsdale Airport proposed for fiscal year 2003/04 that is projected to cost \$410,300.

The IGA will be funded (90%) by ADOT. ADOT will contract and administer the project. The Airport will require \$41,030 capital contingency budget for the project. Capital contingency budget required represents the 10 percent City cost share to accomplish the pavement preservation project. This is the first year of Aviation enterprise fund self-sufficiency. Operations have not yet resulted in enough revenue for the Airport to provide the cost share funds at this time. Airport's financial plans forecast that Aviation will repay the capital contingency before the end of fiscal year 2003/04.

If City Council approves this IGA and the capital contingency budget, the general funded advances to the Airport to be repaid during fiscal year 2003/04 total \$450,437 to date. If the Airport's revenue forecasts are met, premised upon transient landing fee increases to be proposed in conjunction with FY 03/04 budget, the advances should be repaid in full by the fiscal year 2003/04 close. The Airport's situation is analogous to that of a business that, for cash flow purposes, arranges for a bank line of credit.

The majority of the funds advanced, \$325,024, were used to pay for improvements to the Airport's security and access control system. The security capital project will cost an estimated \$554,350 by the time it is complete in February 2003. The Airport typically pursues capital projects only if Federal Aviation Administration or Arizona Department of Transportation funds are available. Due to the project's criticality, the security enhancements were installed using solely Aviation funds.

Airport's projected fiscal year 2002/03 operating income of \$429,000 was not sufficient to fully pay for the project during fiscal year 2002/03. As a result, the General Fund transfer at the end of the current fiscal year was planned to be \$325,024. The first capital contingency budget approved by Council in the current fiscal year provided \$84,373 grant match to advance the Kilo Ramp Reconstruction project, taking advantage of unexpected federal funding to pay for 95.53 percent of the \$1.6 million project. Advances to Airport now total \$409,397.

**Related Policies, References:** None.

Action Taken \_\_\_\_\_

## **BACKGROUND**

ADOT has initiated a cost-saving process to ensure that the critical pavements at Arizona's airports are being maintained as determined by the state's pavement rating program. In the new process, ADOT groups together all pavements that can have similar types of preservation and puts packages out to bid as larger jobs. ADOT has identified Scottsdale Airport's Alpha and Charlie taxiways as needing an overlay and slurry seal. The project was ranked a priority, and ADOT indicates that this work would be conducted in July 2003. The project is listed on the proposed Airport capital budget for fiscal year 2003/04, when work will take place. The project is programmed to begin in July 2003 and will take approximately 10 days to complete. It will require 3 or 4 nighttime runway closures to complete the areas adjacent to the runway.

## **ANALYSIS & ASSESSMENT**

### **Significant issues to be addressed.**

The Alpha and Charlie taxiways were constructed in 1982 and 1984, respectively. The Alpha taxiway is the busiest taxiway on the airfield and has been recommended by Airport engineers for a 1" porous friction course overlay in order maintain its integrity and extend its useful life. The Charlie taxiway receives far less use and is in considerably better condition than the Alpha Taxiway and, therefore, will require only a slurry seal.

These pavement preservation projects will complete a four-year initiative to rehabilitate all Airport's critical movement area (runway and taxiway) pavements in order to meet Federal Aviation Administration and ADOT standards. If the City chooses not to pursue the project at this time, ADOT may put the project back into a later year of the program. If ADOT funds are not available at all, the Airport will need to plan to fund the preservation at a future date.

### **Community involvement.**

This issue was open for public comment at the Airport Advisory Commission meeting on November 13<sup>th</sup>, 2002 and no comments were received.

## **RESOURCE IMPACTS**

### **Available funding.**

The project is estimated to cost \$410,300. The City, through the Aviation Enterprise Fund, must agree to pay 10% of the project cost or approximately \$41,030. The capital budget for the City share of the project is being requested as part of the Aviation 5-year capital improvement program currently being prepared for Council's consideration in Spring 2003. It is not anticipated that ADOT will begin work until after the new fiscal year begins on July 1, 2003. However, in order for ADOT to program the work, the City needs to show its intent to undertake the project. ADOT will directly pay for 90% of the total project cost. The City's \$41,030 share (10%) is requested to be transferred from the capital contingency budget. Advances will be repaid from Aviation enterprise funds in fiscal year 2003/04, premised upon transient landing fee increases to be proposed in conjunction with fiscal year 2003/04 budget.

The spreadsheet below displays the detail of general funded advances approved for the Airport as of November 2002.

*(Continued)*

General Fund Advances to Airport Capital Projects

Approved to date	Fiscal Year 2002/03
Aviation Financial Plan General Fund Transfer	\$325,034
Kilo Ramp Reconstruction	\$84,373
Subtotal	\$409,407
Proposed	
Alpha/Charlie Pavement Preservation Cost Share	\$41,030
Total Due From Aviation Enterprise Fund	\$450,437

**Future budget implications.**

The general funded advances have been programmed into the Airport Financial Plan as liabilities to be repaid during fiscal year 2003/04. Fiscal year 2003/04 Aviation operating revenue is premised upon the continuation of current operational trends and annual user fee reviews.

The pavement overlay will need to be covered with an asphalt seal coat approximately every 5 to 7 years. The aviation capital program includes these future seal coat applications.

**Staffing, workload impact.**

Current Airport Operations personnel will staff this project. No additional staffing or overtime will be needed to complete it.

**OPTIONS & STAFF  
RECOMMENDATION**

**Description of Option A:**

Adopt Resolution No. 6188 and proceed to qualify for ADOT pavement preservation funds.

**Description of Option B:**

Do not adopt Resolution No. 6188. The pavement may fail before its useful life has expired without proper preservation. Airport would have to spend more money to replace these taxiways if the available preservation funding and methods are not used at this time. The lack of preservation would result in Airport's not meeting FAA and ADOT standards

**Recommended Approach:**

Option A was recommended by the Airport Advisory Commission at the November 13, 2002 meeting with a 6 to 0 vote.

**RESPONSIBLE**

Transportation Department, Aviation Division

**DEPT(S)**

**STAFF CONTACTS**

Scott T. Gray, Aviation Director, (480) 312-7735, [sgray@ci.scottsdale.az.us](mailto:sgray@ci.scottsdale.az.us)

**APPROVED BY**

Name

Date

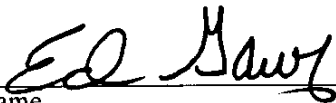
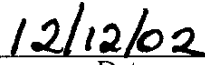
John C. Little, General Manager, Transportation, (480) 312-2539,  
[jlittle@ci.scottsdale.az.us](mailto:jlittle@ci.scottsdale.az.us)

Name

Date

Craig Clifford, Chief Financial Officer, Financial Services, [cclifford@ci.scottsdale.az.us](mailto:cclifford@ci.scottsdale.az.us),

(Continued)

   
\_\_\_\_\_  
Name Date  
Ed Gawf, Deputy City Manager, (480) 312-4510, [egawf@ci.scottsdale.az.us](mailto:egawf@ci.scottsdale.az.us)  
\_\_\_\_\_  
\_\_\_\_\_

**ATTACHMENTS**

1. Resolution No. 6188
2. IGA No. 2002-138-COS
3. Airport Advisory Commission Minutes 11/13/02

(Continued)

RESOLUTION NO. 6188

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, ARIZONA, AUTHORIZING THE EXECUTION OF INTERGOVERNMENTAL AGREEMENT NO. 2002-138-COS, WITH THE STATE OF ARIZONA, ACTING BY AND THROUGH THE ARIZONA DEPARTMENT OF TRANSPORTATION, FOR THE PURPOSE OF CONDUCTING PAVEMENT PRESERVATION WORK AT SCOTTSDALE AIRPORT.

WHEREAS, the Arizona Department of Transportation ("ADOT") has initiated a new cost-saving program to ensure that the critical pavements at Arizona's airports are being maintained and preserved in accordance with the State of Arizona's pavement rating program; and

WHEREAS, all pavements with similar preservation requirements are being grouped together by ADOT and put out to bid as larger jobs; and

WHEREAS, the Alpha and Charlie taxiways at Scottsdale Airport were constructed in 1982 and 1984, respectively; and

WHEREAS, the Alpha taxiway, as the busiest taxiway on the airfield, will require a one-inch overlay in order to maintain its integrity and extend its useful life; and

WHEREAS, the Charlie taxiway receives far less use and is in considerably better condition than Alpha taxiway and, therefore, will only require a slurry seal; and

WHEREAS, ADOT has identified Scottsdale Airport's Alpha and Charlie taxiways for inclusion in its pavement preservation program, and proposes to award construction contracts for the performance of the overlay and slurry seal projects in or about July 2003; and

WHEREAS, these pavement preservation projects will complete a four-year initiative to rehabilitate all of Scottsdale Airport's critical movement area pavements (runway and taxiway) in order to meet standards promulgated by the Federal Aviation Administration and ADOT; and

WHEREAS, these pavement preservation projects are estimated to cost \$410,300.00; and

WHEREAS, the City must agree to reimburse ADOT ten percent (10%) of the project cost, or approximately \$41,030.00.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Arizona, as follows:

Section 1. That Mary Manross, Mayor, is hereby authorized to execute, on behalf of the City of Scottsdale, Intergovernmental Agreement No. 2002-138-COS, with the State of Arizona, acting by and through the Arizona Department of Transportation, for the purpose of conducting pavement preservation work at Scottsdale Airport.

---

Section 2. That the City Manager, or designee, is hereby authorized to transfer \$41,030.00 from the Capital Contingency Budget to the Airport Enterprise Fund.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 10<sup>th</sup> day of December, 2002.

ATTEST:

CITY OF SCOTTSDALE, an  
Arizona municipal corporation

\_\_\_\_\_  
Sonia Robertson, City Clerk

\_\_\_\_\_  
Mary Manross, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
David A. Penrfartz, City Attorney

**AIRPORT INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF SCOTTSDALE**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2002, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, by and between the State of Arizona acting by and through the Arizona Department of Transportation, Aeronautics Division, herein referred to as the "State" and the City of Scottsdale, a political subdivision of the State of Arizona, acting by and through its MAYOR and CITY COUNCIL herein referred to as the "Sponsor".

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Sponsor is empowered by Arizona Revised Statutes Section 28-8413 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Sponsor.

3. The State and Sponsor desire to share in costs incident to pavement preservation of taxiways at the Scottsdale Airport, hereinafter referred to as the Project. It is contemplated that this Project will be constructed by the State during State fiscal year 2003-4. The Project will include PFC Overlay (1") of Taxiway A and crack sealing and application of a slurry seal to Taxiway C. The Sponsor will contribute 10% of the construction cost of the project.

Now, therefore, in consideration of the foregoing recitals and of the covenants and agreements made by the parties herein to be kept and performed, the parties agree as follows:

**II. SCOPE**

**1. State Responsibilities**

a. The State will conduct investigations and prepare to State standards design plans, specifications and such other documents and services required for construction bidding and construction.

b. The State will call for bids and award one or more construction contracts for the Project, administer same, and make all payments to the contractor(s).

c. The State will upon award of the construction contract, invoice the Sponsor for its contribution to the Project.

d. The State will provide final acceptance of the Project.

e. The State will upon completion, determination of final quantities, approval and acceptance of the Project, submit a final accounting of the Project construction costs to the Sponsor including a refund of any excess funds, if final construction costs are less than the contract award amount, or an invoice for additional funds due, if final construction costs are more than the contract amount.

## 2. Sponsor Responsibilities

a. The Sponsor will provide access to the Airport to the State, the State's representative, and the contractor for the purpose of preparing design plans and specifications for the Project, constructing the Project, and administering the construction of the Project.

b. The Sponsor will coordinate with the State and approve safety plans, security plans, phasing plans, and construction schedules prepared by the State.

c. The Sponsor will coordinate with airport users, issue Notam's as required, and provide operations support during construction, as needed.

d. The Sponsor will pay the State the Sponsor's contribution to the Project within thirty days after receipt and approval of an invoice.

e. The Sponsor will upon completion and acceptance of the Project by the State, provide maintenance of the airport pavements improved with the Project.

f. The Sponsor shall abide by and enforce the Sponsor Assurances incorporated herein as Exhibit A.

## III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said project and payment; provided, however, that this agreement, may be cancelled at any time prior to the award of a project construction contract, upon thirty (30) days written notice to the other party.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. If the Sponsor fails to comply with any of this Agreement, the State, by written notice to the Sponsor, may suspend participation until appropriate corrective action has been taken by the Sponsor.

5. If the Sponsor fails to comply with the conditions of the Agreement, the State, by written notice to the Sponsor, may terminate the Agreement in whole or in part. The notice of termination will contain the reasons for termination, the effective date, and costs incurred prior to termination. The Sponsor shall reimburse the State any costs incurred prior to the date of termination.

6. When the continuation of the Project will not produce beneficial results commensurate with the further expenditure of funds or when funds are not appropriate or are withdrawn for use hereunder, the State may terminate this Agreement. In the case where continuation of the Project will not produce beneficial results, the State and the Sponsor shall mutually agree upon the termination either in whole or in part. In the case where funds have been withdrawn or not appropriated, the State shall have the right of termination at its sole option.

7. No waiver of any condition, requirement or right expressed in this Agreement shall be implied by any forbearance of the State to declare a default, failure to perform or to take any other action on account of the violation of such violation be continued or repeated.

8. The Sponsor shall comply with all Federal, State and Local laws, rules, regulations, ordinances and decrees that are applicable to the performance hereunder.

9. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

10. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

11. Any litigation between the Sponsor and the State shall be commenced and prosecuted in an appropriate state court of competent jurisdiction within Maricopa County, State of Arizona.

12. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Aeronautics Division  
255 East Osborn, Suite 101  
Phoenix, Arizona 85012

City of Scottsdale  
ATTN: Scott Gray, Airport Director  
15000 N. Airport Dr.  
Scottsdale, AZ 85260

13. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this agreement and that the agreement is in proper form.

14. Each and every provision of law and clause required by law to be inserted in this Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall forthwith be physically amended to make such insertion or correction.

15. Each party (as indemnitor) agrees to indemnify, defend, and hold harmless the other party (as indemnitee) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorneys fees) (hereinafter collectively referred to as claims) arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**STATE OF ARIZONA**

Department of Transportation – Aeronautics Division

By \_\_\_\_\_

Authorized Party / Title

By \_\_\_\_\_

GARY ADAMS  
Director

ATTEST

By \_\_\_\_\_

Authorized Party / Title



**DRAFT**

**SCOTTSDALE AIRPORT ADVISORY COMMISSION  
15000 N. AIRPORT DRIVE, SCOTTSDALE, AZ 85260**

**November 13, 2002  
REGULAR MEETING**

**MINUTES**

**PRESENT:** Bill Mack, Chairman  
Donald Maxwell  
Leonard Tinnan  
David Vaughan (via teleconference)  
Philip Vickers

**STAFF:** Scott Gray, Aviation Director  
Gary Mascaro, Assistant Aviation Director, Administration  
Chris Read, Assistant Aviation Director, Operations  
Paul Norman, Assistant City Attorney

**CALL TO ORDER**

Chairman Mack called the meeting to order at 6:00 p.m.

**ROLL CALL**

A formal roll call confirmed members present as stated above.

**APPROVAL OF MINUTES**

Commissioner Knudsen made a motion to approve the minutes of the September 11, 2002 meeting. Commissioner Tinnan seconded the motion and the minutes were approved 6-0.

Commissioner Maxwell made a motion to approve the minutes of the October 9, 2002 meeting. Commissioner Tinnan seconded the motion and the minutes were approved 6-0.

**PUBLIC COMMENT**

Mr. Nick Luongo, resident of Ironwood Village, stated he is here tonight to make an urgent plea to the Commissioners. He stated he has been bombarded with aircraft noise and it is getting worse at this time of year due to tourist season and special events. He would like the Commission to sign a letter to the City Council urging them to immediately do a noise contour study. In addition, he requested they begin a Part 161 Study immediately so they can ban Stage 2 aircraft. Mr. Luongo also urged the Commission to use their influence to obtain the radar that will enable the jets to fly at a minimum altitude, i.e., 1500 ft. above ground level.

Chairman Mack advised the Commission that he has a recognition plaque for former Commissioner and Vice Chairman, Guy Stepanski, who recently resigned from the Commission.

**PERMIT RATIFICATION(S)**

**A. Item 2 - Action**

Ratification of Airport Aeronautical Business Permit for Grand Canyon Airlines, Inc. to provide aircraft charter services at Scottsdale Airport.

Mr. Gary Mascaro requested that Item 2, Ratification of Airport Aeronautical Business Permit for Grand Canyon Airlines, be moved to the end of the meeting as the representatives are traveling but hope to arrive before the meeting adjourns. The Commission agreed to move the item to the end of the agenda. However, if they are not present before adjournment, the item will be tabled to next month's meeting.

**B. Item 3 - Action**

Ratification of Airport Aeronautical Business Permit for Lon's Catering to provide off-airport in-flight catering at Scottsdale Airport.

Mr. Mascaro advised the Commission that Item 3, Ratification of Airport Aeronautical Business Permit for Lon's Catering, will have to be tabled to next month's meeting as the representative from Lon's Catering contacted him earlier to inform him she would not be able to be present this evening.

**C. Item 4 - Action**

Ratification of Airpark Aeronautical Business Permit for SimCom Training Center to provide specialized flight training services in the Scottsdale Airpark.

Mr. Mascaro stated Item 4, Ratification of Airpark Aeronautical Business Permit for SimCom Training Center to provide specialized flight training services in the Airpark, has a representative, Mr. James Hill, present to answer any questions from the Commission. Mr. Mascaro stated that SimCom has provided the appropriate documentation and it is anticipated that SimCom will generate an additional \$3,000.00 in annual revenue to the Aviation Enterprise Fund.

Mr. Hill said the anticipated revenue is based on a best estimate. He added at prior Commission meeting he explained the specialized flight training they do, but he'd be glad to answer any further questions regarding their business.

Commissioner Vickers inquired as to the size of the aircraft they will be using. Mr. Hill responded they will be using King Air and Citation Jets. Commissioner Vickers inquired if they have their Certificate of Insurance. Mr. Mascaro responded he believes they do have a copy of the certificate on file and he would be happy to provide that at a later date.

Commissioner Tinnan made a motion to approve Ratification of the Airpark Aeronautical Business Permit for SimCom Training subject to receipt of the Certificate of Insurance. Commissioner Knudsen seconded the motion and it passed 6-0.

**D. Item 5 - Action**

Ratification of Airpark Aeronautical Business Permit for Airpark Partners, L.L.C. to provide hangar/shade leasing services in the Scottsdale Airpark.

Mr. Mascaro stated Item 5, Ratification of Airpark Aeronautical Business Permit for Airpark Partners, L.L.C. to provide hangar/shade leasing in the Scottsdale Airpark has Mr. John Meyer's, agent, representing the company present this evening to answer any questions. Mr. Mascaro pointed out a map on the back of the Commission Action Report that details the location of the hangar space. Mr. Mascaro stated the associated fees are anticipated to generate \$3,200.00 in annual revenue to the Aviation Enterprise Fund.

Commissioner Knudsen inquired if it was a new hangar facility and what the size was. Mr. Meyer said it is a new hangar facility of 5400 sq. ft. with office space and fuel farm. It can house one, possibly two, aircraft depending on size.

Commissioner Vickers inquired if sub-lease of the facility was a possibility. Mr. Meyers responded possibly, but at this point he is not dealing with any issue other than the permit application. Commissioner Vickers requested that the sub-lease agreement that they have be approved by the Aviation Director and contain the provision that any aircraft that is stored in those parking facilities comply with any noise ordinance of the City of Scottsdale. Mr. Meyer responded he would like Commissioner Vickers to refer

that to his Legal Counsel and he feels it is an inappropriate question for him to answer. Mr. Meyer said it is a question that borderlines an area that pertains to other areas and all he is asking for is an Aeronautical Business Permit.

Chairman Mack attempted to clarify for Commissioner Vickers how the airpark businesses can operate, and how they are in a private area, and as long as they comply with the civil laws and City ordinances in operation today, the Airport cannot lawfully interfere with them. He added they can authorize the business permit, but the aircraft the owner or his sub-lessee puts in there, we have no control over. Mr. Meyer stated they are in compliance with all City ordinances and will continue to do so.

Mr. Gray added that the Airpark Aeronautical Business Permit for Airpark Partners, L.L.C., is solely for the purposes of allowing them to conduct the business. Each of the aircraft operators would have to come to Airport Administration and get an Airpark Access Permit, which would therefore require them to meet all the City codes and rules and regulations of the Airport.

Commissioner Maxwell made a motion to approve Ratification of Airpark Aeronautical Business Permit for Airpark Partners, L.L.C. Commissioner Knudsen seconded the motion and it passed 6-0.

## **OLD BUSINESS**

There were no old business items.

## **NEW BUSINESS**

### **A. Item 6 - Action**

Recommend Aviation 5-Year Capital Improvement Program

Mr. Gray added the item is brought to the Commission so they can review all the projects and make their recommendations to the Capital Improvement Program review team.

Mr. Chris Read gave a PowerPoint presentation on the 5-Year Capital Improvement Program. Mr. Read said there are seven projects which he will provide details in the presentation: 1) Alpha and Charlie Taxiway Overlay; 2) Runway Safety Area Improvement, which will be done in five year portions; 3) Apron Pavement Reconstruction; 4) Vehicle Security Gate Upgrades; 5) Airport Security Fencing Upgrade; 6) Funding for Design Projects for FY 03/04 and 05/06; and 7) Pavement Preservation.

Mr. Read responded to questions from the Commission concerning materials, construction, and costs involved in the projects, in addition to providing information concerning which may or may not be FAA or ADOT grant funded. Mr. Gray answered additional questions concerning costs associated with airport pavement usage, pavement maintenance requirements, and fees that are based on our expenditures, not on total grant expenditures. Mr. Gray added that City costs are typically ten percent of the total costs associated with grant-funded projects.

Commissioner Vickers said it bothers him that we may have health and environmental concerns in the community but because we accept FAA grants we cannot make our own local rules. Mr. Gray, said it will take approximately a \$40 million outlay over the next five years to cover capital and expenses. The revenue projections for the next five years are approx. \$12 million.

Mr. Mascaro directed the Commission to a list of re-justified items. He added that Financial Services now reviews existing approved and adopted projects which are placed on this re-justification list to determine if the numbers are still significant, and if any of the projects can be moved out or deleted if they are no longer necessary. Mr. Mascaro wished to show the Commission that they did move some of the projects out due to cash flow reasons. Commissioner Knudsen inquired if the GPS system was moved out and Mr. Mascaro responded that it was. Mr. Mascaro added that in the coming months they will be bringing to the Commission a Financial Plan Update.

Commissioner Maxwell made a motion to recommend the Aviation 5-Year Capital Improvement Program. Commissioner Tinnan seconded the motion and it passed 6-0.

**B. Item 7 - Action**

Recommend to City Council approval of a one-year extension of Contract #2001-154-COS, dated November 5, 2001, with Gilbertson Associates, Inc. to provide engineering services at Scottsdale Airport.

Mr. Read stated the City initiated this contract to provide professional airport engineering services for Scottsdale Airport. He added that the terms in the contract require that it be brought before the City Council at each one-year extension of the possible five-years of the contract. Mr. Read said some of the key considerations are that Gilbertson Associates has performed all work as requested by Airport management during the first year of the contract in an outstanding manner. Gilbertson Associates has expressed its willingness to extend the contract at the same terms and conditions and pricing as stated in last year's contract. The FAA and ADOT grants fund the majority of the projects conducted under the Gilbertson contract. The Aviation division budgets \$21,000.00 for non-grant related general services projects.

Commissioner Vickers questions why the compensation structures are not reflected in the body of the agreement. Mr. Gray responded a cost sheet is provided in the Authorization of Services which we have on file.

Mr. Gray said this contract is actually the City's standard which was created by the Purchasing department, the Legal department, and Risk Management therefore this particular contract not only applies to the Airport, but it applies to all City practices. We cannot change the contract as it stands today as it has already been adopted by the City Council. If we were to change the provisions of the contract, then we would have to re-bid the project. We either have to accept it the way it is, or not. Mr. Gray added that as long as they have been using Dave Gilbertson they have not had one legal dispute that he is aware of.

Commissioner Maxwell made a motion to recommend a one-year extension of Contract No. 2001-154-COS with Gilbertson & Associates, Inc. Commissioner Knudsen seconded the motion. The motion was passed by a vote of 5-1, with Commissioner Vickers abstaining.

**C. Item 8 - Action**

Recommendation to City to ADOPT Resolution No. 6188 to AUTHORIZE Contract No. 2002-138-COS with the Arizona Department of Transportation for the Airport Surface Treatment Program.

Mr. Read stated that typically, in the past, ADOT will grant the Airport a dollar amount and then we can to out and put the project to bid, hire a contractor, and conduct the project in that manner. ADOT has now come up with a new plan, whereas they identify all similar construction projects within the state, put them all together, and then put them out to bid. ADOT hires the contractor, we then allow the contractor to come out and do the work. Mr. Read added the project is estimated to cost \$410,000.00 and the City will match it with ten percent. The project is scheduled to begin in July 2003.

Commissioner Vickers stated he will vote for this contract because this contract has a provision which is critical to the successful operation of any municipality or business working in society today.

Commissioner Maxwell made a motion to recommend the City Council to ADOPT Resolution No. 6188 to AUTHORIZE contract No. 2002-138-COS with the Arizona Department of Transportation for the Airport Surface Treatment Program. Commissioner Knudsen seconded the motion and it passed by a vote of 6-0.

## **NOISE ISSUES**

### **A. Item 9 - Information**

- a. September 2002 Noise Report
- b. October 2002 Noise Report

Chairman Mack advised the Commission a citizen, Mr. Ben Benedict, wished to speak before the Commission on Item No. 9.

Mr. Benedict said he wished to respectfully cancel his request to speak.

Mr. Gary Mascaro stated the September and October 2002 noise reports are fairly self-explanatory, however he noted that in September they met with the FAA to evaluate possible procedure modifications, and they attended the Airspace Working Group, which has been an ongoing issue. He added they met with two real estate agencies regarding Scottsdale Airport and provided them with information, including six information packets and emails related to that issue.

Mr. Mascaro added they provided briefings to two real estate groups in October and made two complaint home visits that went very well.

Commissioner Knudsen inquired where Mr. Christman lived and what has occurred to suddenly cause him to call 705 times in September? Mr. Gray stated that that gentleman has lived in that location several years, yet we have never heard from him prior to this time. However, four months ago he found it necessary to contact us and complain about what seems to be every plane that flies over his neighborhood. What's changed in the last four months, versus the two years he's been there, may be his awareness of the NW 2000 or the noise complaint web access.

Mr. Mascaro advised the Commission that Kevin Shirer went to visit Mr. Christman at his home and discussed aircraft noise, overflights, and educated him. He added what Mr. Christman was doing was logging every single aircraft he ever saw flying over the house whether it was noisy or not. Mr. Mascaro said in the October Noise Report his complaints decreased to 228 calls.

Chairman Mack noted the City of Chandler and the City of Mesa require that they post noise contours in real estate sales offices and he mentioned this to a number of City Council people. Chairman Mack would like them to look at requiring model home sites to post the noise contour information in their office. Mr. Gray said he would look into it further.

## **OPERATIONS UPDATE**

Mr. Read updated the Commission that there were no significant events in the September/October timeframe. However, on Monday of this week at about 2:00 p.m. a Cessna 182 was landing on Runway 21, there were significant winds, they had a hard landing and it broke off the right wheel and gear assembly. The aircraft went off the runway and skidded approximately 1500 feet taking out one of the runway signs and a couple of lights. No one was injured, but it was considered an Alert 3 and it did close the runway for one hour.

## **DIRECTOR'S REPORT**

Mr. Gray provided the Commission with a brief update on the status of the radar that was mentioned earlier in the meeting by Mr. Luongo. He added there are two radar situations going on. One is the existing ASR8 that Williams-Gateway Airport was having problems with and which our bright scope was being viewed from until it failed, and we are now feeding off the Sky Harbor radar which obviously doesn't give us the lower altitudes. Mr. Gray added they were doing some triage on that facility and have spent millions of dollars on that older equipment as it was a former military facility. They are currently gathering data and confirm whether or not it is operating within the standards. The test results are expected by November 22, 2002, subsequent to that they will be doing an operational readiness test within TRACON

to ensure it covers certain areas they are interested in. One is Scottsdale, the other location is the practice area down near Chandler Airport.

Mr. Gray advised the Commission on the two memos regarding the U.S. Customs Service at Scottsdale Airport. Earlier in the month, a letter was sent to U.S. Customs canceling the service due to the 30% increase in expense to the City to continue to provide that service. Following numerous phone calls from some of the operators and inquiries to the number of transient users, it was decided that we would be best served to keep the service but double the fee structure. The based aircraft operators had no problem with that, nor did the transient operators that they talked to. Mr. Gray added that one of the issues is due to the City's budget process, the proposed fee increases are only brought before the City Council in July, so the increases will not be effective till July 1, 2003.

Commissioner Knudsen inquired if U.S. Customs gave a reason for increasing their fees. Mr. Gray responded they had no idea the fees would be increased till they noted it in the Federal Register and it was already passed. There was no input solicited from any of the user fee airports.

Commissioner Vickers asked what percentage of the 200,000 operations are aircraft that exceed the FAA mandated noise requirements at an acceptable level. Mr. Gray responded none of the airplane operations that we have exceed FAA standards. There is no standard for general aviation aircraft, other than the 65dnl noise contour, but 65dnl noise contour is calculated based on the total number of operations and is not based on any one aircraft. For example any one aircraft could have a db reading of 90, and although that may be considered noisy by many folks, the metrics used to calculate what noise impacts are is a weighted scale averaged over a 24 hour over an annual operational level.

Commissioner Vickers would like any situation identified in any municipal airport where the FAA has sued the airport to recover FAA grant fund, and no one has been able to show him one case where that act occurred. He added they have the 1990 act, but there is no case law to support the act by itself. He then wonders if they might be able to again, as Mr. Littlefield said when he addressed the Ironwood residents, everything they possibly can to reduce noise. He then wonders if through our contractual documents, through our lease agreements, through whatever type of document is executed by a commercial pilot to keep his plane here overnight, that there's got to be some kind of rental agreement or something that triggers the fees. He would like to explore is not taking the drastic and establishing a noise ordinance that isn't an in your face to the FAA, but perhaps try to control noise through contractual documents, leasees, sub-leasees, etc. Commissioner Vickers stated at length his suggestions and opinions on this issue.

Mr. Gray said they would have to defer this discussion. Chairman Mack stated it is not an agenda item and we cannot get into it at this time. Commissioner Vickers requested it be place on the agenda for the next meeting.

Chairman Mack said Item 2, Ratification of the Aeronautical Business Permit for Grand Canyon Airlines, will be continued till next month's meeting, as the representatives from Grand Canyon Airlines are still not present.

## **MEETING SCHEDULE**

### **A. Item 10 - Action** Schedule of Meetings

Chairman Mack advised the Commission the next regular meeting is scheduled for Wednesday, December 11<sup>th</sup>.

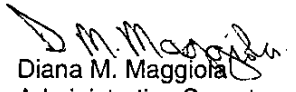
## **ITEMS FROM THE COMMISSION**

There were no items from the Commission.

**ADJOURNMENT**

The meeting was adjourned at 7:25 p.m.

Respectfully submitted,

  
Diana M. Maggiora  
Administrative Secretary

# CITY COUNCIL REPORT



MEETING DATE: 01/07/2003    ITEM No. 12    GOAL: Transportation

## SUBJECT

Increase fees for users of the US Customs Service at Scottsdale Airport

## REQUEST

Consider adoption of Resolution No. 6222 to authorize revision of the Airport/Airpark Rates and Fees Schedule to increase the US Customs User Fees.

The proposed change to the Airport/Airpark Rates and Fees Schedule is projected to provide the Airport enough additional revenue to cover an unanticipated cost increase associated with US Customs services. Fees for overtime service would change from two times the normal rate for eligible aircraft, to a flat rate of \$225 per after-hour use. Fees for light corporate jets would increase to \$600, from \$300 per use, and fees for heavy corporate jets would increase to \$750 from \$375 per use. Current service users support the increase in fees as the preferred alternative to discontinuing the service.

Cancellation of the US Customs Services requires a 120-day notice period, per the Agreement. Even if the user service is cancelled immediately, Scottsdale Airport will continue to incur the cost until April or May of this fiscal year.

If fees are increased, staff forecast that Customs User Fee revenue will be \$119,000 for the year. Cost for fiscal year 2002/03 of offering the US Customs User Fee Service at Scottsdale Airport is approximately \$101,950 plus additional operating expenses.

**Related Policies, References:** Airport/Airpark Rates and Fees Schedule, Scottsdale Revised Code, Chapter 5; Contract 1999-020-COS

## BACKGROUND

On August 16, 1999, City Council authorized Contract 1999-020-COS, a Memorandum of Agreement with US Customs Service to offer customs services at Scottsdale Airport. The primary purpose of the service is to allow aircraft operators arriving from Mexico or Canada to fly direct to Scottsdale Airport to clear customs. This provides aircraft operators enhanced service levels by reducing their operating expenses and saving them time.

Last year, US Customs Service conducted its annual review and analysis of the costs incurred in the User Fee Airports Program. As a result, the charge to all user fee airport locations was increased. New fees became effective October 1, 2002 with the new federal fiscal year, resulting in increased cost to Scottsdale Airport to continue to offer the service. At that time, the Transportation General Manager notified US Customs officials that the unanticipated fee increase could not be subsidized by the Airport enterprise fund, and gave US Customs the required 120-

day notice of termination, as required by the Agreement. Airport users objected and offered to pay higher fees if the service could be continued. The Transportation General Manager agreed to take the necessary steps to implement a fee increase that would insure the users continue to pay the full cost of the service.

Airport staff analysis also has documented a thirty percent increase in usage of the US Customs Service over the same peak period last year. This increased usage will help to insure that the service pays for itself.

The following changes are proposed to the Airport's Fees Schedule:

Customs User Fee (Users accessing customs after-hours must pay an additional \$225.00, except for single/light twin aircraft, which are prohibited from using the service after-hours)

Single/Light Twins	\$50.00/use
Heavy Twin/Turboprop	\$225.00/use
Light Corporate Jet (under 35,000 lbs.)	\$600.00/use
Heavy Corporate Jet (35,000 – 75,000 lbs.)	\$750.00/use

**ANALYSIS &  
ASSESSMENT**

**Community involvement.** This fee increase was discussed with several of the based and transient operators who use the customs services. All concurred that this service is too valuable to cancel. They indicate that they are willing to incur the increased costs associated with the service

**RESOURCE IMPACTS**

**Available funding.** If Council authorizes the fees increase, the Aviation Enterprise Fund will fully cover the cost of offering the Customs User Fee Service.

**Cost recovery options.** Funding for this program and all aviation-related expenses are funded through the Aviation Enterprise Fund. As a result of the unanticipated fee increase by US Customs Service, it is necessary to increase the user fees associated with this service in order to cover the direct operating costs.

**OPTIONS & STAFF  
RECOMMENDATION**

**Description of Option A:** Adopt Resolution No. 6222 authorizing the increase in US Custom User Fees on the Airport/Airpark Rates and Fee Schedule.

**Description of Option B:** Do not adopt Resolution No. 6222. Continue the service and incur additional operating expenses.

**Description of Option C:** Do not adopt Resolution No. 6222. In accordance with the contract between the City of Scottsdale and US Customs Service, terminate the agreement within one hundred and twenty (120) days written notice.

**Recommended Approach:** Option A is recommended by staff.

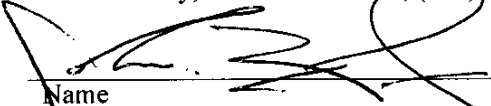
**RESPONSIBLE DEPT(S)**

Transportation Department, Aviation Division

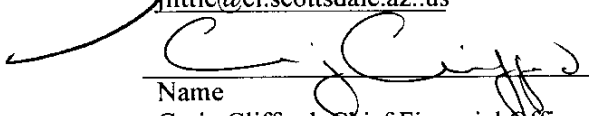
**STAFF CONTACTS**

Scott T. Gray, Aviation Director, (480) 312-7735, [sgray@ci.scottsdale.az.us](mailto:sgray@ci.scottsdale.az.us)

**APPROVED BY**

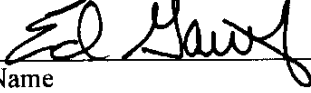
  
Name  
John C. Little, General Manager, Transportation, (480) 312-2539,  
[jlittle@ci.scottsdale.az.us](mailto:jlittle@ci.scottsdale.az.us)

12/11/02  
Date

  
Name  
Craig Clifford, Chief Financial Officer, Financial Services,  
[cclifford@ci.scottsdale.az.us](mailto:cclifford@ci.scottsdale.az.us)

12/12/02  
Date

cclifford@ci.scottsdale.az.us



12/12/02

Name

Date

Ed Gawf, Deputy City Manager, (480) 312-4510, egawf@ci.Scottsdale.az.us

**ATTACHMENTS**

1. Resolution No. 6188 <sup>6222</sup>
2. Airport/Airpark Rates and Fees Schedule



RESOLUTION NO. 6222

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AMENDING THE AIRPORT/AIRPARK RATES AND FEES SCHEDULE TO INCREASE THE U.S. CUSTOMS SERVICE USER FEES.

WHEREAS, Chapter 5 of the Scottsdale Revised Code requires City Council approval of any changes in rates and fees imposed under the the Airport/Airpark Rates and Fees Schedule; and

WHEREAS, on August 16, 1999, the City Council authorized Agreement No. 1999-020-COS, a Memorandum of Agreement with the U.S. Customs Service to offer customs services at Scottsdale Airport; and

WHEREAS, the City Council previously imposed certain fees on users of the customs services to offset the fees incurred by Scottsdale Airport under the terms of the Memorandum of Agreement with the U.S. Customs Service; and

WHEREAS, the U.S. Customs Service has conducted an annual review and analysis of the costs incurred in its User Fee Airports Program; and

WHEREAS, as a result of this review, the Customs Service has increased the charges imposed on all user fee airport locations, effective October 1, 2002; and

WHEREAS, the increased charges have resulted in increased costs to Scottsdale Airport; and

WHEREAS, airport users who currently use the service desire that Scottsdale Airport continue to offer customs services and are willing to pay increased fees to insure their continuation.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The Airport/Airpark Rates and Fees Schedule is hereby amended to impose the following fees for customs services offered by the U.S. Customs Service at Scottsdale Airport: \$50.00 per use for single/light twin aircraft; \$225.00 per use for heavy/twin turboprop aircraft; \$600.00 per use for light corporate jet aircraft (under 35,000 lbs.); and \$750.00 per use for heavy corporate jet aircraft (35,000 – 75,000 lbs.). Users requesting customs services at times other than normally scheduled hours shall pay an additional \$225.00 per use. This additional fee shall not apply to single/light twin aircraft, which are prohibited from using the service except during normally scheduled hours.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 7<sup>th</sup> day of January 2003.

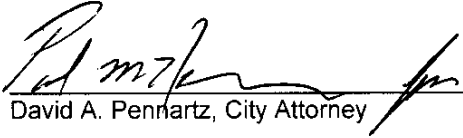
ATTEST:

CITY OF SCOTTSDALE, an  
Arizona municipal corporation

\_\_\_\_\_  
Sonia Robertson, City Clerk

\_\_\_\_\_  
Mary Manross, Mayor

APPROVED AS TO FORM:

  
David A. Penhartz, City Attorney



## SCOTTSDALE AIRPORT/AIRPARK\*

### RATES AND FEES SCHEDULE

Access Device Fee*	\$50.00 deposit
Airport/Airpark Access Fee*	
Single Engine	\$17.50 + Fuel Flowage Fee
Twin Engine	\$22.50 + Fuel Flowage Fee
Turbine/Jet Aircraft	\$55.00 + Fuel Flowage Fee
Airport Construction Permit	Based on Airport Escort Fee
Airport/Airpark Fuel Flowage Fee*	\$0.08/gallon
Airport Hourly Rate	\$38.29/hour
Airport Terminal Gate Fee (not applicable to Aeronautical Business Permittees)	
Single Engine Aircraft	\$6.00/use
Twin Engine Aircraft	\$8.00/use
Turbine/Jet Aircraft	\$12.00/use
Single Rotor Helicopter <12,500 pounds	\$6.00/use
Single Rotor Helicopter >12,500 pounds	\$8.00/use
Twin Rotor Helicopter	\$12.00/use
Airport Terminal Passenger Boarding Lounge Use Fee*	\$7.00/hour
City T-Hangar	\$150.00/month
City T-Shade	\$85.00/month
Commercial Photography Permit	Based on Airport Escort Fee
Customs User Fee (Users accessing customs after-hours must an additional \$225.00, except for single/light twin aircraft, which are prohibited from using the service after-hours)	
Single/Light Twins	\$50.00/use
Heavy Twin/Turboprop	\$225.00/use
Light Corporate Jet (under 35,000 lbs.)	\$600.00/use
Heavy Corporate Jet (35,000 – 75,000 lbs.)	\$750.00/use
Monthly Aeronautical Business Permit Fee*	% of gross revenue or flat fee Dependent upon activities as defined in the Airport Minimum Operating Standards
Special Event Permit Fee	Based on Airport Escort Fee
Tiedown Fees	
Single Engine Aircraft	\$35.00/month
Twin Engine Aircraft	\$45.00/month
Turbine/Jet Aircraft	\$110.00/month
Single Rotor Helicopter <12,500 pounds	\$35.00/month
Single Rotor Helicopter >12,500 pounds	\$45.00/month
Twin Rotor Helicopter	\$110.00/month
Transient Landing Fee	\$1.00/1,000 pounds maximum certificated takeoff weight for all transient aircraft weighing 12,500 lbs & over
Transient Parking Fees	
Single Engine	\$5.00/night
Twin Engine	\$6.00/night
Turbine/Jet Aircraft	\$15.00/night
Single Rotor Helicopter <12,500 pounds	\$4.00/night
Single Rotor Helicopter >12,500 pounds	\$8.00/night
Twin Rotor Helicopter	\$12.00/night

July 1, 2002

# CITY COUNCIL REPORT



MEETING DATE: 01/06/2003<sup>07</sup> ITEM NO. 13 GOAL: Fiscal Management

## SUBJECT

Contract for Legal Services in connection with City of Scottsdale v. Ancala Global Company, L.C., et al., Superior Court Case No. CV 99-16269.

## REQUEST

Adopt Resolution No. 6223 authorizing the Mayor to execute Contract No. 2000-081A-COS, an outside counsel contract renewal in a maximum amount of Sixty Thousand Dollars (\$60,000.00) with the law firm of GRAHAM & ASSOCIATES, LTD. for legal services regarding representation of the City of Scottsdale in the litigation entitled City of Scottsdale v. Ancala Global Company, L.C., et al., Superior Court Case No. CV 99-16269, an eminent domain action brought to acquire real property for McDowell Sonoran Preserve.

### Related Policies, References:

Resolution No. 6223

## BACKGROUND

This case involves a condemnation proceeding initiated by the City to condemn approximately 24.168 acres owned by Ancala Global Company L.C. The proceedings were initiated by the City to acquire the subject property for inclusion within the McDowell Sonoran Preserve established by the City as a park for desert and mountain preservation.

Shortly after commencement of the case, the City posted a \$3,384,000 immediate possession bond in accordance with required court procedures and took possession on April 18, 2000.

Remaining issues include right to take issues, just compensation and fair market value for the land actually condemned, severance damages, if any, and defendant's counterclaims of fraud, negligent misrepresentation, and alleged violations of due process and equal protection rights. In addition, issues remain concerning right of way over the property to be acquired.

## ANALYSIS & ASSESSMENT

### Significant issues to be addressed.

The scope of this litigation requires resources beyond those available to the City in-house. In addition, aside from the fact that GRAHAM & ASSOCIATES, LTD. are providing top quality representation, it would be extremely financially inefficient to seek other representation at this point in the litigation. Consequently, the only alternative to continuing this contract would be to settle this action.

On July 22, 1999, the City contracted with the law firm of GRAHAM &

Action Taken \_\_\_\_\_

ASSOCIATES, LTD. for an amount of \$20,000.00 to provide specialized and expert legal services relating to the acquisition of eminent domain of real property necessary for the McDowell Sonoran Preserve. On June 19, 2000, a renewal contract in the amount of \$40,000.00 was entered into. On August 21, 2001, a third renewal contract for \$60,000.00 in additional fees was approved. Current expenditures are approaching the previously authorized amount of \$60,000.00. This new contract will allow the firm to continue to represent the City's interests.

**Community involvement.**

The proceedings were initiated by the City to condemn Ancala's property for inclusion within the McDowell Sonoran Preserve established by the City for a park for desert and mountain preservation. Payment of legal fees does not involve a public outreach process.

**RESOURCE IMPACTS**

**Available funding.**

This contract will enable the City to continue receiving expert legal services with respect to this matter. This contract will be paid from funds reserved for the acquisition of real property within the McDowell Sonoran Preserve study boundary. This contract will be paid from funds available in capital account number 52140.

**OPTIONS & STAFF  
RECOMMENDATION**

**Description of Option A:**

The scope of this litigation requires resources beyond those available to the City in-house. In addition, aside from the fact that GRAHAM & ASSOCIATES, LTD. are providing top quality representation, it would be extremely financially inefficient to seek other representation at this point in the litigation. Consequently, the only alternative to continuing this contract would be to settle this action.

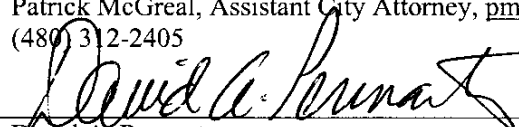
**RESPONSIBLE DEPT(S)**

General Government, City Attorney's Office – Civil Division

**STAFF CONTACT(S)**

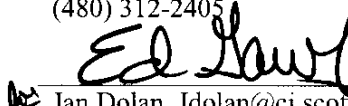
Patrick McGreal, Assistant City Attorney, [pmcgreal@ci.scottsdale.az.us](mailto:pmcgreal@ci.scottsdale.az.us)  
(480) 312-2405

**APPROVED BY**

  
David A. Pennartz,  
City Attorney, [dpennartz@ci.scottsdale.az.us](mailto:dpennartz@ci.scottsdale.az.us)  
(480) 312-2405

12/23/02  
Date

**APPROVED BY**

  
Jan Dolan, [jdolan@ci.scottsdale.az.us](mailto:jdolan@ci.scottsdale.az.us)  
City Manager,  
(480) 312-2422

12/23/02  
Date

**ATTACHMENTS**

1. Resolution No. 6223
2. Contract No. 2000-081A-COS

(Continued)

RESOLUTION NO. 6223

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO CONTRACT FOR LEGAL SERVICES, NO. 2000-081A-COS, WITH THE LAW FIRM OF GRAHAM & ASSOCIATES, LTD.

WHEREAS, the City Attorney's Office has previously contracted with GRAHAM & ASSOCIATES, LTD. for legal services in connection with *City of Scottsdale v. Ancala Global Company, L.C., et al.*, Superior Case No. CV 99-16269, brought to acquire real property necessary for the McDowell Sonoran Preserve; and

WHEREAS, the City of Scottsdale desires that GRAHAM & ASSOCIATES continue to provide legal services in connection with *City of Scottsdale v. Ancala Global Company, L.C., et al.*, Superior Case No. CV 99-16269;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. Mayor Mary Manross is hereby authorized and directed to execute, on behalf of the City of Scottsdale, Contract for Legal Services, No. 2000-081A-COS, an agreement between the City of Scottsdale and the law firm of GRAHAM & ASSOCIATES, LTD. for the provision of legal services.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Scottsdale this 6<sup>th</sup> day of January, 2003.


ATTEST:

CITY OF SCOTTSDALE, an  
Arizona municipal corporation

By: \_\_\_\_\_  
Sonia Robertson,  
City Clerk

By: \_\_\_\_\_  
Mary Manross,  
Mayor

APPROVED AS TO FORM:

By:   
David A. Penhartz,  
City Attorney



**CONTRACT FOR LEGAL SERVICES  
CITY OF SCOTTSDALE  
City Attorney's Office**

THIS CONTRACT is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between the **City of Scottsdale**, a municipal corporation, hereinafter called **CITY**, and the law firm of **Graham & Associates, LTD** hereinafter called **COUNSEL**.

CITY having determined it to be in its best interest to contract with attorneys not in its employ who, by experience and training, are qualified to assist in connection with **City of Scottsdale v. Ancala Global Company, L.C., et al., Superior Court Case No. CV 99-16269, brought to acquire real property for the McDowell Sonoran Preserve.**

CITY having satisfied itself as to the qualifications of COUNSEL as named above.

NOW, THEREFORE, it is agreed between the parties as follows:

1. **Scope of Service and Representation.** COUNSEL agrees to perform all necessary legal services, including investigation, legal research, preparation of pleadings, legal memoranda and briefs, and appearances in court, in representing the City. Such legal services shall be carried out in cooperation with the City Attorney's Office who shall at all times be apprised of the status of all matters. No major decisions regarding the resolution of the legal issues or litigation, in whole or in part, shall be made without the prior approval of the City Attorney's Office. All offers of compromise made by plaintiff(s) shall be promptly transmitted to CITY through its City Attorney's Office, together with COUNSEL'S recommendations. City will be responsible for obtaining proper authority to accept a compromise or for obtaining authority to make a counter-offer. No appeals will be taken from judgments in any litigation without prior approval of City, acting through its City Attorney's Office.
2. **Advice and Status Reporting.** COUNSEL shall provide CITY with timely advice of all significant developments arising during performance of their services hereunder orally or in writing, as COUNSEL consider appropriate. COUNSEL shall provide copies of all pleadings and other documents prepared by COUNSEL, including research memoranda prepared by COUNSEL, unless they have been otherwise provided to the City Attorney's Office.
3. **Compensation.** CITY agrees to pay COUNSEL for services rendered hereunder as follows:
  - A. Two Hundred Dollars (\$200.00) per hour for M. Graham.
  - B. One Hundred and Seventy-Five Dollars (\$175.00) per hour for J. Nicoletti-Jones; W. McDonald and K. Patterson.
  - C. One Hundred and Fifty Dollars (\$150.00) per hour for D. Rohwer
  - D. One Hundred and Twenty-Five Dollars (\$125.00) per hour for Jr. Associates.

- E. One Hundred Dollars (\$100.00) per hour for L. Fain; C. Valliarelli; C. Lysle.
- F. Seventy-Five Dollars (\$75.00) per hour for D. Lewerke; K. Harper and M. Hoffner.

All services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. CITY shall not be billed for use of COUNSEL'S "runners", but may be billed for messenger service required when COUNSEL'S runner is not available. Total money paid under this contract **shall not exceed Sixty Thousand Dollars (\$60,000.00)**. Fees and expenses shall be billed on a monthly basis and paid by CITY within forty-five (45) days.

4. Travel. Approval for travel shall be obtained through the City Attorney's Office prior to departure. Travel time may be billed to CITY, with the exception of travel time to CITY to meet with CITY representatives or the City Council. "Reasonable expenses" means expenses not exceeding one hundred eighty five dollars (\$185.00) per night for hotel rooms, seventy-five dollars (\$75.00) per person per day for meals including gratuity, and for the rental charges of the most economical type of rental car available. Where possible, COUNSEL and consultants and experts and subcontractors shall stay at hotels that charge a government rate. When traveling by airplane, whenever possible, reduced fare tickets shall be purchased. Gasoline shall not be billed to CITY except when a rental car is used out-of-state.

5. Reimbursement for Expenses. All costs and other disbursements for outside services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. All copying charges shall be billed at no more than fifteen cents (\$.15) per page. To the extent practical, large photocopying tasks will be sent out to an outside copy service in an effort to further reduce photocopying costs. Outgoing faxes shall be billed for actual long distance charges incurred, not on a per page basis. On-line database retrieval charges (i.e. Lexis, Westlaw, CompuServe, Dialogue, etc.) shall be billed at actual cost.

6. Billing Procedures. In addition to the billing procedures set forth elsewhere in this Contract, COUNSEL shall follow these billing procedures:

A. "Unit billing" shall not be done. COUNSEL shall bill only for actual time spent on a task, and each task shall be itemized (e.g. tel. to opposing counsel (.2); extended tel. to Mr. Smith (.3); prepare motion to continue (.3).

B. Secretarial, word processing or other overtime shall not be billed (e.g., preparation of documents which are computerized or on a form, such as subpoenas, notices of deposition, independent medical examinations, medical authorizations, trial notices, uniform interrogatories, and requests to produce); only the actual time spent by the attorney reviewing, revising or drafting such documents shall be billed.

C. Whenever possible, attorneys shall minimize time spent consulting with one another and agree to use their best efforts to minimize the costs of the legal representation to CITY. Work on this matter billed by attorneys not listed must be approved by the City Attorney's Office in advance.

D. All consultants, experts and subcontractors engaged to provide services to COUNSEL in the performance of this agreement, and the use and extent of those services, shall be approved by the City Attorney's Office prior to them providing the services. Payment of their expenses will be subject to the same terms as paragraphs 4 and 5 above.

E. COUNSEL will submit monthly billings for services rendered and expenses incurred, which shall be paid by the City Attorney's Office. Each bill shall also contain, in addition to information required elsewhere in this Contract: 1) fees and costs incurred in the preceding month; 2) the cumulative total of fees and costs to date; 3) the City Attorney's Office contract number 2002-017 and; 4) the unbilled amount remaining on the contract. COUNSEL will use its best efforts to inform the City Attorney's Office eight weeks prior to COUNSEL billing the final fees and costs authorized under this contract. CITY will pay no fees incurred over and above the contract amount without prior authorization from CITY.

7. Maintenance of Records. In compliance with CITY'S standard procedure, all work performed in connection with this Contract shall be subject to audit. COUNSEL shall maintain all books, documents, papers, accounting records, and other evidence pertaining to time billed and to costs incurred on a particular lawsuit, and to make such materials available at their offices at all reasonable times during the Contract period and for at least three (3) years from the date of final payment for inspection by CITY or any authorized representatives of CITY, and copies thereof shall be furnished, if requested, at CITY'S expense.

8. Conflict of Interest. COUNSEL warrants and covenants that COUNSEL presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Contract a violation of any applicable local, state, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, COUNSEL shall promptly notify CITY of the existence of such conflict of interest, so that CITY may determine whether to terminate this Contract. The City Attorney is authorized to grant customary conflicts waivers to COUNSEL on behalf of the CITY, as are not adverse to the CITY's legal interests in his professional judgment. Otherwise, COUNSEL shall be free to dispose of such portion of their entire time, energy and skill as are not required to be devoted to CITY in such manner as they see fit and to such persons, firms or corporations as they deem advisable so long as no conflict of interest exists.

9. Reporting Requirements

A. Within sixty (60) days of receipt of a case, or at the time disclosure statements are first filed, whichever is sooner, COUNSEL shall provide CITY with an initial written evaluation containing the following:

1. A summary of the case's facts and issues;
2. An evaluation of the potential exposure;
3. An outline of the course of action COUNSEL intends to pursue in the case (e.g., names and/or categories of witnesses to be interviewed or deposed; experts to be retained; motions to be filed; etc.);
4. An estimate of the cost to defend the case through trial;

5. A cost/benefit analysis, including recommendations as to early settlement or offers of judgment; and,
6. The name of the attorney who will be primarily responsible for handling the case, and the names of others who will assist that person.

10. Additional Investigation. Whenever additional investigation is deemed desirable by COUNSEL and can be provided by use of non-attorney investigators, COUNSEL shall notify CITY through the City Attorney's Office of such need, and CITY may elect, at its option, to conduct such investigation. In this event, CITY shall be solely responsible for the accuracy of the facts or other information developed in response to such requests.

11. Termination. CITY may terminate this Contract upon giving ten (10) days written notice for convenience or cause. Any default by COUNSEL, if COUNSEL fails to comply with any of the conditions of this Contract, or services which provide unsatisfactory performance as judged by the Contract Administrator, and failure to provide CITY, upon request, reasonable assurance of future performance, shall be causes allowing CITY to terminate this Contract. In the event of termination for cause, CITY shall not be liable to COUNSEL for any amount, and COUNSEL shall be liable to CITY for any and all damages sustained by reason of the default which gave rise to the termination. Any notice of cancellation shall specify the particular lawsuit or lawsuits to which it applies, and any lawsuit not particularly specified shall continue to be handled by COUNSEL and, as to those, this Contract will continue in effect; provided, however, the right is retained by CITY to terminate services on any lawsuit by notifying COUNSEL in writing.

12. Notices. When notice or correspondence is required to be sent to CITY, it shall be sent to the Contract Administrator named below:

City Attorney's Office  
City of Scottsdale  
3939 Drinkwater Blvd.  
Scottsdale, Arizona 85251  
Attn: Donna M. Bronski

Should the Contract Administrator change, CITY will notify COUNSEL in writing.

13. Indemnification For Liability and Professional Liability

To the fullest extent permitted by law COUNSEL, its successors, assigns and guarantors, shall defend, indemnify and hold harmless CITY, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any negligent, or intentional actions, acts, errors, mistakes or omissions caused in whole or part by COUNSEL relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of COUNSEL'S and Subcontractor's employees.

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

14. Insurance Representations and Requirements

General: Counsel agrees to comply with all applicable City Ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of COUNSEL, shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to CITY. Failure to maintain insurance as specified may result in termination of this Contract at CITY'S option.

No Representation of Coverage Adequacy: By requiring insurance herein, CITY does not represent that coverage and limits will be adequate to protect COUNSEL. CITY reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify any insurance deficiency shall not relieve COUNSEL from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of subject contract is satisfactorily performed, completed and formally accepted by the CITY, unless specified otherwise in this Contract.

Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.

Use of Subcontractors: If any work under this agreement is subcontracted in any way, COUNSEL shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting CITY and COUNSEL. COUNSEL shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

Evidence of Insurance: Prior to commencing any work or services under this Contract, COUNSEL shall furnish CITY with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by COUNSEL'S insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions, and limits of coverage and such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the cited policies expire during the life of this Contract, it shall be COUNSEL'S responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions:

1. CITY, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies: a) Commercial General Liability, b) Auto Liability and c) Excess Liability-Follow Form to underlying insurance as required.
2. COUNSEL'S insurance shall be primary insurance as respects performance of subject contract.
3. All policies, except Professional Liability insurance waive rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by COUNSEL under this contract.
4. Certificate shall cite 30-day advance notice of cancellation provision. If standard ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

Required Coverage

Commercial General Liability: COUNSEL shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$1,000,000 Products and Complete Operations Annual Aggregate, and a \$1,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

Professional Liability: If the Contract is the subject of any professional services or work, or if COUNSEL engages in any professional services or work adjunct or residual to performing the work under this Contract, COUNSEL shall maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by COUNSEL, or anyone employed by COUNSEL, or anyone for whose acts, mistakes, errors and omissions COUNSEL is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the work or services, and COUNSEL shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

Vehicle Liability: COUNSEL shall maintain Business Automobile Liability insurance with a limit of \$500,000 each accident on COUNSEL'S owned, hired, and non-owned vehicles assigned to or used in the performance of the COUNSEL'S work or services under this Contract. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

Workers' Compensation Insurance: COUNSEL shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of COUNSEL'S employees engaged in the performance of work or services under this Contract and shall also maintain Employers Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

15. Choice of Law. This Contract shall be governed and interpreted according to the laws of the State of Arizona.

16. Whole Agreement. This Contract constitutes the entire understanding of the parties, and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

17. Amendments. Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract. Should there be a change in the Contract Administrator, however, CITY will only need to notify COUNSEL in writing.

18. Non-Assignment. Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the City Attorney.

19. Cancellation. CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract in any capacity, or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. § 38-511).

20. Independent Contractor Status. The services COUNSEL provides under the terms of this Contract to CITY are that of an independent contractor, not an employee. CITY will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099. Withholding of income tax is not deducted from contractual payments. As a result of this, COUNSEL may be subject to I.R.S. provisions for payment of estimated income tax. Consult the local I.R.S. office for current information on estimated tax requirements. Failure to comply may subject COUNSEL to a penalty.

21. Severability. Should any part of this agreement be declared in a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

IN WITNESS WHEREOF, the City of Scottsdale, by its Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

**City of Scottsdale, a  
municipal corporation**

By: \_\_\_\_\_  
Mary Manross, Mayor

**Graham & Associates, LTD**

By: Michael A. Graham  
Its: President

ATTEST:

\_\_\_\_\_  
Sonia Robertson, City Clerk

APPROVED AS TO FORM:

David A. Penhartz  
David A. Penhartz, City Attorney

**Note to Attorneys: Remember to send along a copy of your Certificate of Insurance with the Contract for Legal Services.**

# CITY COUNCIL REPORT



MEETING DATE: 01/07/2003    ITEM No. 14    GOAL: Fiscal Management

## **SUBJECT**

**Consider Adopting Ordinance to Form Municipal Fire Department or Call Special Election on May 20, 2003 for a Public Vote on Forming a Municipal Fire Department.**

(At the request of Councilman Littlefield.)

## **REQUEST**

**Option A.    ADOPT ORDINANCE WITHOUT CALLING A SPECIAL ELECTION.**

Consider Adoption of Ordinance No. 3489, amending Chapter 36 of the Scottsdale Revised Code by adding sections 36-1, 36-2 and 36-3, relating to formation of a municipal fire department.

**Option B.    CONSIDER CALLING SPECIAL ELECTION, FOR MAY 20, 2003.**

**B-1: FOR INITIATIVES IT-2002-04 AND IT-2002-05, IF THE MEASURES QUALIFY FOR THE BALLOT WITH ENOUGH VALID SIGNATURES;**

Consider Adoption of Resolution No. 6230 calling a special election on Initiatives IT-2002-04 and IT-2002-05 for May 20, 2003, and

Approve a budget transfer from the General Fund contingency account (No. 100-99501-52890) to the City Clerk's Office elections expense account (No. 100-01035-52190) in the amount of \$150,000.00 for the estimated cost of the special election.

**OR**

**B-2: FOR REFERRAL BY THE CITY COUNCIL OF BALLOT MEASURES TO THE VOTERS FOR A CHARTER AMENDMENT AND CITY CODE AMENDMENTS FOR FORMATION OF A MUNICIPAL FIRE DEPARTMENT.**

Consider Adopting Ordinance No. 3490 submitting to the qualified electors of the City a charter amendment, adding Sec. 6 to Art. 4 of the Charter, requiring the creation of a municipal fire department, and

Action Taken \_\_\_\_\_

Adopt, subject to voter approval, Ordinance No. 3491, amending Chapter 36 of the Scottsdale Revised Code by adding Sections 36-1, 36-2 and 36-3, relating to formation of a municipal fire department, and

Adopt Resolution No. 6231 calling a special election on the ballot measures for May 20, 2003 and referring Ordinance No. 3490 (charter amendment) and Ordinance No. 3491 (city code amendments) to the voters for adoption or rejection, and

Approve a budget transfer from the General Fund contingency account (No. 100-99501-52890) to the City Clerk's Office elections expense account (No. 100-01035-52190) in the amount of \$150,000.00 for the estimated cost of the special election.

## **BACKGROUND**

### **Fire Initiatives Submitted**

Two initiatives (Nos. IT-2002-04 and IT-2002-05) have been proposed for voter adoption to amend the City Charter and City Code to establish a municipal fire department instead of the fire service contract now in place with Rural/Metro. Previous initiatives (IT-2002-02 and IT-2002-03) for the same ballot measures were submitted on July 3, 2002, but had insufficient number of valid signatures to qualify the proposed amendments for the ballot. The political committee then obtained the new initiative numbers and began circulating signature sheets on the same two ballot measures under the new numbers. Signature petitions on the proposed charter amendment and code amendment were submitted to the City Clerk on November 26, 2002.

### **Initiative Verification Process**

The City Clerk completed her initial processing and determined that there are 29,011 signatures eligible for verification on Initiative IT-2002-04, and 29,034 signatures eligible for verification on Initiative IT-2002-05. A total of 16,531 valid signatures are required on each initiative to qualify to be placed on the ballot for voter approval.

As provided by statute, a random sample of 5% of the eligible signatures on each initiative were sent by the City Clerk to the County Recorder for verification on December 18, 2002. The results of that verification are due back to the City Clerk by January 3, 2003 and will be utilized by the City Clerk to estimate the total number of valid signatures on each initiative. If that estimate is greater than 105% of the required number of 16,531 valid signatures (approximately 17,358), the initiative qualifies for the ballot. If it is less than 95% of the required number of 16,531 valid signatures (approximately 15,704), the initiative fails. If the estimated number of valid signatures on an initiative falls between 95% - 105% of the required number of 16,531 (approximately 15,704 and 17,358), all eligible signatures on that initiative must be forwarded to the County Recorder for verification of whether the actual number of valid signatures is 16,531 or greater.

### **Election Dates**

If the initiatives qualify for consideration by the voters, the City Council could submit the initiatives for voter consideration at a special election on May 20, 2003, September 9, 2003, or November 4, 2003. If the Council does not call a special

election for this purpose, the initiative measures would be placed on the ballot at the next City general election, to be held on March 9, 2004.

#### **Self-Referral of Ballot Measures to the Ballot**

State law and the City Charter also allow the City Council voluntarily to refer the ballot measures proposed by the fire initiatives (or even a different version of one or both initiatives) to the voters for consideration either at a special election or on the City's general election ballot.

#### **Adoption of Ordinance Without Referral to the Ballot**

Finally, the Council also may decide to form a municipal fire department without voluntarily referring the question to a public vote, by adopting an ordinance establishing the fire department. The ordinance could be in the same form as proposed by Initiative IT-2002-05 or could be different in its provisions. If the Council adopted an ordinance to form a municipal fire department, it would be subject to referendum.

### **RESOURCE IMPACTS**

A special election is estimated by the City Clerk to cost approximately \$150,000 and would require a contingency transfer from the general fund contingency account.

Administration of the election would be accomplished through existing staff positions and through the elections contract with the County Recorder's Office.

The future cost of forming and operating a municipal fire department has not been determined.

There are no cost recovery options available.

### **OPTIONS**

#### **Option A. ADOPT ORDINANCE WITHOUT CALLING A SPECIAL ELECTION.**

Consider Adoption of Ordinance No. 3489, amending Chapter 36 of the Scottsdale Revised Code by adding sections 36-1, 36-2 and 36-3, relating to formation of a municipal fire department.

#### **Option B. CONSIDER CALLING SPECIAL ELECTION, FOR MAY 20, 2003.**

##### **B-1: FOR INITIATIVES IT-2002-04 AND IT-2002-05, IF THE MEASURES QUALIFY FOR THE BALLOT WITH ENOUGH VALID SIGNATURES;**

Consider Adoption of Resolution No. 6230 calling a special election on Initiatives IT-2002-04 and IT-2002-05 for May 20, 2003, and

Approve a budget transfer from the General Fund contingency account (No. 100-99501-52890) to the City Clerk's Office elections expense account (No. 100-01035-52190) in the amount of \$150,000.00 for the estimated cost of the special election.

**OR**

**B-2: FOR REFERRAL BY THE CITY COUNCIL OF  
BALLOT MEASURES TO THE VOTERS FOR A  
CHARTER AMENDMENT AND CITY CODE  
AMENDMENTS FOR FORMATION OF A MUNICIPAL  
FIRE DEPARTMENT.**

Consider Adopting Ordinance No. 3490 submitting to the qualified electors of the City a charter amendment, adding Sec. 6 to Art. 4 of the Charter, requiring the creation of a municipal fire department, and

Adopt, subject to voter approval, Ordinance No. 3491, amending Chapter 36 of the Scottsdale Revised Code by adding Sections 36-1, 36-2 and 36-3, relating to formation of a municipal fire department, and

Adopt Resolution No. 6231 calling a special election on the ballot measures for May 20, 2003 and referring Ordinance No. 3490 (charter amendment) and Ordinance No. 3491 (city code amendments) to the voters for adoption or rejection, and

Approve a budget transfer from the General Fund contingency account (No. 100-99501-52890) to the City Clerk's Office elections expense account (No. 100-01035-52190) in the amount of \$150,000.00 for the estimated cost of the special election.

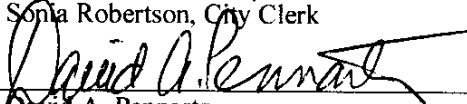
**RESPONSIBLE DEPT(S)** General Government, City Attorney's Office – Civil Division

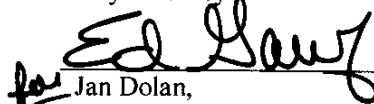
**STAFF CONTACTS**

Sonia Robertson, City Clerk, (480) 312-2412, [srobertson@scottsdaleaz.gov](mailto:srobertson@scottsdaleaz.gov)  
David Pennartz, City Attorney, (480) 312-2405, [dpennartz@scottsdaleaz.gov](mailto:dpennartz@scottsdaleaz.gov)

**APPROVED BY**

 12/26/02  
\_\_\_\_\_  
Carolyn Jagger, Deputy City Clerk for  
Sonia Robertson, City Clerk Date

 12/26/02  
\_\_\_\_\_  
David A. Pennartz,  
City Attorney Date

 12/26/02  
for \_\_\_\_\_  
Jan Dolan,  
City Manager Date

**ATTACHMENTS**

1. Ordinance No. 3489 (Forming Municipal Fire Department Without Special Election)
2. Resolution No. 6230 (Calling Special Election on 5/20/03 on Initiatives IT-2002-04 and IT-2002-05)
3. Ordinance No. 3490 (Adopting Charter Amendment Subject to Voter Approval)
4. Ordinance No. 3491 (Adopting of Code Amendments Subject to Voter Approval)
5. Resolution No. 6231 (Calling Special Election on 5/20/03 for Referral of Ordinance No. 3490 and Ordinance No. 3491 for Voter Approval)

ORDINANCE NO. 3489

AN ORDINANCE OF THE CITY OF SCOTTSDALE,  
MARICOPA COUNTY, ARIZONA, AMENDING CHAPTER 36  
OF THE SCOTTSDALE REVISED CODE, RELATING TO  
THE FIRE PREVENTION AND PROTECTION, BY ADDING  
ARTICLE I, ESTABLISHING A MUNICIPAL FIRE  
DEPARTMENT; AND PROVIDING FOR IMPLEMENTATION  
THROUGH THE BUDGET PROCESS.

BE IT ORDAINED by the Council of the City of Scottsdale as follows:

Section 1. Chapter 36 of the Scottsdale Revised Code, relating to fire prevention and protection, is hereby amended, to add article I, establishing a municipal fire department, which shall read as follows:

**Sec. 36-1. Fire department; established.** There shall be a fire department, headed by a fire chief who shall be a city employee reporting directly to the city manager. The fire chief shall be responsible for the direction of all fire fighting, fire prevention, fire service, and emergency medical activities of the city, as well as for the planning and development of programs to protect the lives and property in the city from emergency incidents. The fire chief shall be responsible for establishing and implementing department policies and rules necessary for the operation of the department and shall assign personnel and maintain a training program.

**Sec. 36-2. Fire department; organization.** The fire department shall be organized into the following divisions, each headed by an assistant fire chief who shall be city employees who shall report directly to the fire chief:

(a) operations division which shall be responsible for fire suppression, emergency services, safety, inspection, and investigation.

(b) prevention division which shall be responsible for fire prevention, training and development, support services, research, and planning.

The fire chief shall recommend to the council any organizational changes that are deemed necessary or desired for the efficient operation of the fire department.

**Sec. 36-3. Fire department; hiring preference.** Persons currently employed on a full-time basis to perform fire protection services within the city shall be given preference by the city in staffing the fire department.

Ordinance No. 3489  
January 7, 2003

Section 2. This Ordinance shall be implemented by the City Council in the course of its approval of the City's budget and by the City Manager as funded in the budget.

PASSED AND ADOPTED by the City Council of the City of Scottsdale this 7<sup>th</sup> day of January, 2003.

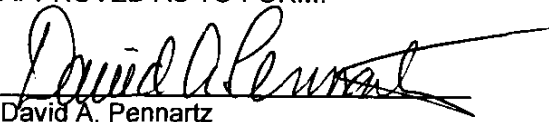
ATTEST:

CITY OF SCOTTSDALE, an  
Arizona municipal corporation

\_\_\_\_\_  
Sonia Robertson  
City Clerk

\_\_\_\_\_  
Mary Manross  
Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
David A. Pennartz  
City Attorney

## RESOLUTION NO. 6230

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, CALLING A SPECIAL ELECTION TO BE CONDUCTED ON MAY 20, 2003 FOR THE PURPOSE OF REFERRING TO THE QUALIFIED ELECTORS OF THE CITY OF SCOTTSDALE, INITIATIVE NO. IT-2002-04 (CHARTER AMENDMENT REQUIRING THE CREATION OF A MUNICIPAL FIRE DEPARTMENT) AND INITIATIVE NO. IT-2002-05 (CITY CODE AMENDMENTS RELATING TO THE FORMATION OF A MUNICIPAL FIRE DEPARTMENT); DESIGNATING SPANISH TRANSLATION OF ELECTION MATERIALS; DEADLINES FOR VOTER REGISTRATION; EARLY VOTING DATES; TYPE OF VOTING SYSTEM TO BE USED; AND ESTABLISHING POLLING PLACES AND HOURS THE POLLS WILL BE OPEN.

BE IT RESOLVED by the mayor and city council of the City of Scottsdale, Maricopa County, Arizona, as follows:

### Section 1. Designating the municipal election dates; purpose.

A special election ("Special Election") shall be held in the City of Scottsdale on Tuesday, May 20, 2003 to permit the qualified electors of the City to vote to accept or reject Initiative No. IT-2002-04, proposing an amendment to the City Charter that would require the creation of a municipal fire department, and Initiative No. IT-2002-05, proposing City Code provisions relating to the formation of a municipal fire department.

### Section 2. Designating publication of the call and notice of election.

The publication of the call and notice of the Special Election shall be given or caused to be given by the city clerk, as provided by law, and as may be deemed necessary and appropriate in the city clerk's discretion to advise the public of the election.

### Section 3. Designating deadline for voter registration and early/absentee voting dates.

Maricopa County registration and voting lists will be used for the Special Election. In order to be qualified to vote in the Special Election, a resident must be registered by April 21, 2003.

Early voting will be permitted at the Special Election in accordance with the provisions of Title 16, Chapter 4, Article 8, Arizona Revised Statutes, as amended. Early ballot applications for the Special Election will be available to qualified City electors beginning February 16, 2003. Official ballots will be available beginning April 17, 2003.

### Section 4. Designating Spanish translation.

To comply with the Voting Rights Act of 1965, as amended, the proceedings pertaining to the Special Election will be translated into Spanish and posted, published and recorded in each instance where posting, publication, and recording for such proceedings are required, such as this call of election, the notice of election, ballots, the publicity pamphlet, all early voting materials and all instructions at the polling places.

### Section 5. Designating the voting system.

Voting shall be by the Eagle "op-tech scan" system in use by Maricopa County Elections Department for the recordation of the electors' choice as authorized by Arizona Revised Statutes and pre-cleared by the United States Department of Justice.

Section 6. Establishing Polling Places and Voting Districts.

The polling places used in the City of Scottsdale Special Election will be the polling places established by Maricopa County Elections Department and utilized for conducting the March 12, 2002 City of Scottsdale general election, if available.

Section 7. Hours of the Polling Places.

The polls will be open from 6:00 a.m. until 7:00 p.m. on election day.

PASSED AND ADOPTED by the Mayor and City Council of the City of Scottsdale, Maricopa County, Arizona, this 7<sup>th</sup> day of January, 2003.

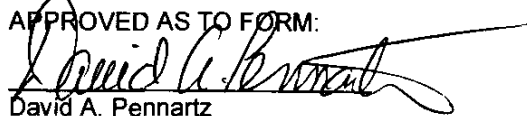
ATTEST:

CITY OF SCOTTSDALE,  
A municipal corporation

\_\_\_\_\_  
Sonia Robertson  
City Clerk

\_\_\_\_\_  
Mary Manross  
Mayor

APPROVED AS TO FORM:

  
David A. Pennartz  
City Attorney

ORDINANCE NO. 3490

AN ORDINANCE OF THE CITY OF SCOTTSDALE,  
MARICOPA COUNTY, ARIZONA, SUBMITTING AN  
AMENDMENT TO THE CHARTER OF THE CITY OF  
SCOTTSDALE TO A VOTE OF THE QUALIFIED  
ELECTORS OF THE CITY AT A SPECIAL ELECTION TO  
BE HELD ON MAY 20, 2003.

BE IT ORDAINED by the Council of the City of Scottsdale as follows:

Section 1. The Council of the City of Scottsdale does hereby submit to a vote of the qualified electors of the City, at a special election, to be held on May 20, 2003, the following amendment to the charter of the City of Scottsdale, pursuant to article 13, section 2 of the constitution of the State of Arizona and article 16, section 1 of the charter of the City of Scottsdale.

**QUESTION #1 (PROPOSITION 400)**

**SHALL ARTICLE 4 CITY CHARTER, RELATING TO ADMINISTRATIVE  
DEPARTMENT OFFICES AND EMPLOYEES BE AMENDED TO ADD SECTION 6,  
REQUIRING THE CREATION OF A CITY FIRE DEPARTMENT, AS FOLLOWS:**

**SEC. 6. FIRE DEPARTMENT.**

A FIRE DEPARTMENT SOLELY STAFFED BY CITY EMPLOYEES SHALL BE CREATED WITHIN SIX (6) MONTHS AFTER THE ADOPTION OF THIS AMENDMENT BY THE VOTERS. THE FIRE DEPARTMENT SHALL BE CHARGED WITH THE MISSION OF PROVIDING FIRE PROTECTION, FIRE PREVENTION, FIRE FIGHTING, EMERGENCY SERVICES, AND PRE-HOSPITAL EMERGENCY MEDICAL TREATMENT FOR THE RESIDENTS OF THE CITY.

THE FIRE DEPARTMENT SHALL BE MANAGED BY A FIRE CHIEF WHO SHALL BE A CITY EMPLOYEE APPOINTED BY THE CITY MANAGER. ADDITIONAL ADMINISTRATIVE AND OPERATIONAL STAFF SHALL BE HIRED AS CITY EMPLOYEES AS NECESSARY TO PROVIDE SAFE AND EFFECTIVE FIRE PROTECTION AND EMERGENCY SERVICES AS REQUIRED. ALL EMPLOYEES OF THE DEPARTMENT SHALL BE COVERED BY THE CIVIL SERVICE ORDINANCES TO THE SAME EFFECT AS ALL OTHER CITY EMPLOYEES.

LOCAL AND NATIONAL STANDARDS SHALL BE TAKEN INTO ACCOUNT IN ESTABLISHING METHODS OF OPERATION, STAFFING, AND TRAINING. SUBJECT TO AND CONSISTENT WITH THE REQUIREMENTS OF STATE LAW, THE COUNCIL SHALL DETERMINE THE ENTITY BY WHICH EMERGENCY MEDICAL TRANSPORTATION SHALL BE PROVIDED.

Ordinance No. 3490  
January 7, 2003

THE FIRE DEPARTMENT, WITH COUNCIL APPROVAL, MAY ENTER INTO  
MUTUAL AID, AUTOMATIC AID, AND DISPATCH AGREEMENTS WITH  
SURROUNDING AND ADJACENT MUNICIPALITIES AND GOVERNMENTAL  
ENTITIES.

PASSED AND ADOPTED by the City Council of the City of Scottsdale this 7<sup>th</sup> day of  
January, 2003.

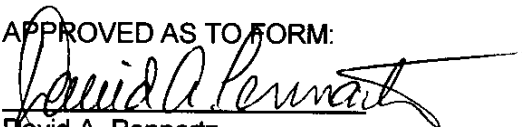
ATTEST:

CITY OF SCOTTSDALE, an  
Arizona municipal corporation,

\_\_\_\_\_  
Sonia Robertson  
City Clerk

\_\_\_\_\_  
Mary Manross  
Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
David A. Pennartz  
City Attorney

ORDINANCE NO. 3491

AN ORDINANCE OF THE CITY OF SCOTTSDALE,  
MARICOPA COUNTY, ARIZONA, SUBMITTING TO A VOTE  
OF THE QUALIFIED ELECTORS PROPOSED  
AMENDMENTS TO CHAPTER 36 OF THE SCOTTSDALE  
REVISED CODE, RELATING TO THE FIRE PREVENTION  
AND PROTECTION, BY ADDING ARTICLE I,  
ESTABLISHING A MUNICIPAL FIRE DEPARTMENT; AND  
PROVIDING FOR CONDITIONAL EFFECTIVENESS  
SUBJECT TO VOTER APPROVAL AT A SPECIAL  
ELECTION TO BE HELD ON MAY 20, 2003.

BE IT ORDAINED by the Council of the City of Scottsdale as follows:

Section 1. Chapter 36 of the Scottsdale Revised Code, relating to fire prevention and protection, is hereby amended, subject to voter approval as provided in Section 2, to add article I, establishing a municipal fire department, which shall read as follows:

**Sec. 36-1. Fire department; established.** There shall be a fire department, headed by a fire chief who shall be a city employee reporting directly to the city manager. The fire chief shall be responsible for the direction of all fire fighting, fire prevention, fire service, and emergency medical activities of the city, as well as for the planning and development of programs to protect the lives and property in the city from emergency incidents. The fire chief shall be responsible for establishing and implementing department policies and rules necessary for the operation of the department and shall assign personnel and maintain a training program.

**Sec. 36-2. Fire department; organization.** The fire department shall be organized into the following divisions, each headed by an assistant fire chief who shall be city employees who shall report directly to the fire chief:

(a) operations division which shall be responsible for fire suppression, emergency services, safety, inspection, and investigation.

(b) prevention division which shall be responsible for fire prevention, training and development, support services, research, and planning.

The fire chief shall recommend to the council any organizational changes that are deemed necessary or desired for the efficient operation of the fire department.

**Sec. 36-3. Fire department; hiring preference.** Persons currently employed on a full-time basis to perform fire protection services within the city shall be given preference by the city in staffing the fire department.

Ordinance No. 3491  
January 7, 2003

Section 2. This Ordinance shall be effective only if approved by the number of votes constituting a majority of all ballots cast during the special municipal election to be held on May 20, 2003.

PASSED AND ADOPTED by the City Council of the City of Scottsdale this 7<sup>th</sup> day of January, 2003.

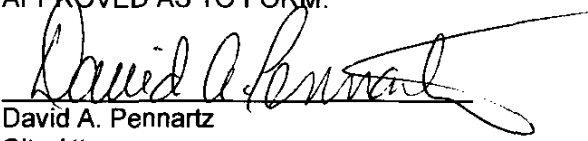
CITY OF SCOTTSDALE, an  
Arizona municipal corporation

ATTEST:

\_\_\_\_\_  
Sonia Robertson  
City Clerk

\_\_\_\_\_  
Mary Manross  
Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
David A. Pennartz  
City Attorney

## RESOLUTION NO. 6231

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, CALLING A SPECIAL ELECTION TO BE CONDUCTED ON MAY 20, 2003 FOR THE PURPOSE OF REFERRING TO THE QUALIFIED ELECTORS OF THE CITY OF SCOTTSDALE, ORDINANCE NO. 3490 (CHARTER AMENDMENT REQUIRING THE CREATION OF A MUNICIPAL FIRE DEPARTMENT) AND ORDINANCE NO. 3491 (CITY CODE AMENDMENTS RELATING TO THE FORMATION OF A MUNICIPAL FIRE DEPARTMENT); DESIGNATING SPANISH TRANSLATION OF ELECTION MATERIALS; DEADLINES FOR VOTER REGISTRATION; EARLY VOTING DATES; TYPE OF VOTING SYSTEM TO BE USED; AND ESTABLISHING POLLING PLACES AND HOURS THE POLLS WILL BE OPEN.

BE IT RESOLVED by the mayor and city council of the City of Scottsdale, Maricopa County, Arizona, as follows:

### Section 1. Designating the municipal election dates; purpose.

A special election ("Special Election") shall be held in the City of Scottsdale on Tuesday, May 20, 2003 to permit the qualified electors of the City to vote to accept or reject Ordinance No. 3490, proposing an amendment to the City Charter that would require the creation of a municipal fire department, and Ordinance No. 3491, proposing City Code provisions relating to the formation of a municipal fire department.

### Section 2. Designating publication of the call and notice of election.

The publication of the call and notice of the Special Election shall be given or caused to be given by the city clerk, as provided by law, and as may be deemed necessary and appropriate in the city clerk's discretion to advise the public of the election.

### Section 3. Designating deadline for voter registration and early/absentee voting dates.

Maricopa County registration and voting lists will be used for the Special Election. In order to be qualified to vote in the Special Election, a resident must be registered by April 21, 2003.

Early voting will be permitted at the Special Election in accordance with the provisions of Title 16, Chapter 4, Article 8, Arizona Revised Statutes, as amended. Early ballot applications for the Special Election will be available to qualified City electors beginning February 16, 2003. Official ballots will be available beginning April 17, 2003.

### Section 4. Designating Spanish translation.

To comply with the Voting Rights Act of 1965, as amended, the proceedings pertaining to the Special Election will be translated into Spanish and posted, published and recorded in each instance where posting, publication, and recording for such proceedings are required, such as this call of election, the notice of election, ballots, the publicity pamphlet, all early voting materials and all instructions at the polling places.

### Section 5. Designating the voting system.

Voting shall be by the Eagle "op-tech scan" system in use by Maricopa County Elections Department for the recordation of the electors' choice as authorized by Arizona Revised Statutes and pre-cleared by the United States Department of Justice.

Section 6. Establishing Polling Places and Voting Districts.

The polling places used in the City of Scottsdale Special Election will be the polling places established by Maricopa County Elections Department and utilized for conducting the March 12, 2002 City of Scottsdale general election, if available.

Section 7. Hours of the Polling Places.

The polls will be open from 6:00 a.m. until 7:00 p.m. on election day.

PASSED AND ADOPTED by the Mayor and City Council of the City of Scottsdale, Maricopa County, Arizona, this 7<sup>th</sup> day of January, 2003.

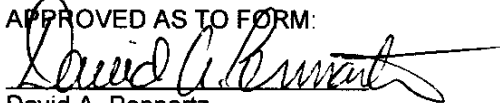
ATTEST:

CITY OF SCOTTSDALE,  
A municipal corporation

\_\_\_\_\_  
Sonia Robertson  
City Clerk

\_\_\_\_\_  
Mary Manross  
Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
David A. Pennartz  
City Attorney

**DRAFT**

**MINUTES**

**SCOTTSDALE CITY COUNCIL**

**CITY COUNCIL MEETING**

**Tuesday, December 10, 2002**

**The Kiva  
City Hall  
Scottsdale, Arizona**

**DRAFT**

**MINUTES  
SCOTTSDALE CITY COUNCIL  
CITY COUNCIL MEETING  
Tuesday, December 10, 2002**

**CALL TO ORDER (IN CITY HALL KIVA FORUM)**

Mayor Manross called to order the Regular Meeting of the Scottsdale City Council on Tuesday, December 10, 2002 in the Kiva, City Hall, at 5:15 P.M.

**ROLL CALL**

Present:

Mayor Mary Manross  
Vice Mayor David Ortega  
Council Members Ned O'Hearn, Tom Silverman, Robert Littlefield,  
Wayne Ecton, and Cynthia Lukas

Also Present:

City Manager Jan Dolan  
City Attorney David Pennartz  
Deputy City Clerk Carolyn Jagger

**Pledge of Allegiance**

Girl Scout Troop 667 and Councilman O'Hearn led the audience in the Pledge of Allegiance.

**Invocation** – No invocation was given; however, the Mayor took the opportunity on behalf of the City Council, to thank everyone for their commitment to the City of Scottsdale.

- To our citizens, who devote time and take an interest in the many challenges facing the city;
- To our many Board and Commission members, who volunteer hundreds of hours a year to provide this Council with recommendations and ideas;
- And to our dedicated City employees who deliver a variety of public services in a highly professional manner.

She thanked everyone for a job well done in 2002.

Additionally, she wished everyone a very joyful, healthy and safe Holiday Season and a happy new year.

**Public Comment**

**Conrad Golich**, 7244 E. Diamond Street, suggested that a Christmas Fair be held the Saturday and Sunday before Christmas on the Los Arcos site. He offered his services as a promoter and notified Council that he was going to proceed with trying to acquire the landowner's approval and organize the event.

**Daniel Basinger**, 29503 N. 107<sup>th</sup> Place, reminded everyone that there will be an electronic recycling event held at the city corporate yard at 9191 E. San Salvador Drive on Saturday, December 14, 2002 from 7:30 a.m. to 2:00 p.m. He urged citizens to drop off their unwanted electronic equipment during the event since the equipment is recycled. He also urged citizens to support the Vista del Camino Food Bank by donating food or sponsoring a family for the holidays.

**DRAFT**

**Minutes**

SPECIAL MEETINGS

REGULAR MEETINGS

EXECUTIVE SESSIONS

November 18, 2002

November 19, 2002

COUNCILWOMAN LUKAS MOVED TO APPROVE THE REGULAR MEETING MINUTES FOR NOVEMBER 18, 2002 AND NOVEMBER 19, 2002. COUNCILMAN SILVERMAN SECONDED THE MOTION WHICH CARRIED 7/0.

**CONSENT AGENDA**

1. **Sprouts Farmers Market Liquor License**  
**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 10 (beer and wine store) State liquor license.  
**Location:** 9301 E Shea Blvd., #132  
**Reference:** 81-LL-2002  
**Staff Contact(s):** Jeff Fisher, Development Services Director, 480-312-7619, [jefisher@ci.scottsdale.az.us](mailto:jefisher@ci.scottsdale.az.us)
2. **Fios Chinese Restaurant Liquor License**  
**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license.  
**Location:** 15027 N Thompson Peak Pky., Ste. 101  
**Reference:** 97-LL-2002  
**Staff Contact(s):** Jeff Fisher, Development Services Director, 480-312-7619, [jefisher@ci.scottsdale.az.us](mailto:jefisher@ci.scottsdale.az.us)
3. **Chart House Liquor License**  
**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license.  
**Location:** 7255 E McCormick Pky.  
**Reference:** 98-LL-2002  
**Staff Contact(s):** Jeff Fisher, Development Services Director, 480-312-7619, [jefisher@ci.scottsdale.az.us](mailto:jefisher@ci.scottsdale.az.us)
4. **House Wines Liquor License**  
**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a permanent extension of premises for an existing beer and wine store.  
**Location:** 7001 N Scottsdale Rd.  
**Reference:** 24-EX-2002  
**Staff Contact(s):** Jeff Fisher, Development Services Director, 480-312-7619, [jefisher@ci.scottsdale.az.us](mailto:jefisher@ci.scottsdale.az.us)

**DRAFT**

5. **DC Ranch Parcel 6.6 Development Proposal**  
**Request:** Develop a seven (7) lot single-family subdivision on a parcel of approximately 17.7 acres.  
**Location:** E Windgate Pass Dr  
**Reference:** 14-PP-2002  
**Staff Contact(s):** Kurt Jones, Project Coordination Manager, 480-312-2524, [kjones@ci.scottsdale.az.us](mailto:kjones@ci.scottsdale.az.us)
6. **DC Ranch Parcel 6.11 Development Proposal**  
**Request:** Develop a seven (7) lot single-family subdivision on a parcel of approximately 12.7 acres.  
**Location:** 10593 E Windgate Pass Dr  
**Reference:** 17-PP-2002  
**Staff Contacts:** Kurt Jones, Project Coordination Manager, 480-312-2524, [kjones@ci.scottsdale.az.us](mailto:kjones@ci.scottsdale.az.us)
7. **DC Ranch Parcel 5.11 Development Proposal**  
**Request:** Develop an eight (8) lot single-family subdivision on a parcel of approximately 15.5 acres.  
**Location:** E/ Thompson Peak Parkway, S/ Windgate Pass  
**Reference:** 21-PP-2001  
**Staff Contact(s):** Kurt Jones, Project Coordination Manager, 480-312-2524, [kjones@ci.scottsdale.az.us](mailto:kjones@ci.scottsdale.az.us)
8. **REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. SEE PAGE 6**
9. **Land acquisition for the McDowell Sonoran Preserve**  
**Request:** Adopt Resolution No. 6203 authorizing purchase in the amount of \$165,000 for the 4.733-acre Parcel No. 217-01-008L, located at 25710 N. 132nd Street, for the McDowell Sonoran Preserve.  
**Related Policies, References:** The parcel is within the expanded Recommended Study Boundary approved in August 1998, by City Council and in November 1998, by voters. The acquisition of this land supports City Council Broad Goal B: Preserve the Character and Environment of Scottsdale, and two sub-goals under Goal B: Complete the acquisition of lands within the adopted Preserve boundaries; and Protect natural resources, open spaces and views.  
**Staff Contact(s):** Robert J. Cafarella, AICP, Director, Preservation Division, 480-312-2577 ([rcafarella@ci.scottsdale.az.us](mailto:rcafarella@ci.scottsdale.az.us))
10. **Land acquisition for the McDowell Sonoran Preserve**  
**Request:** Adopt Resolution No. 6206 authorizing purchase in the amount of \$205,250 for the 5.006-acre Parcel No. 216-59-004J, located at 30230 N. 130th Street, for the McDowell Sonoran Preserve. The purchase price represents the city's offer to purchase the property for \$41,000 per acre.  
**Related Policies, References:** The parcel is within the expanded Recommended Study Boundary approved in August 1998, by City Council and in November 1998, by voters. The acquisition of this land supports City Council Broad Goal B: Preserve the Character and Environment of Scottsdale, and two sub-goals under Goal B: Complete

**DRAFT**

the acquisition of lands within the adopted Preserve boundaries; and Protect natural resources, open spaces and views.

**Staff Contact(s):** Robert J. Cafarella, AICP, Director, Preservation Division, 480-312-2577 ([rcafarella@ci.scottsdale.az.us](mailto:rcafarella@ci.scottsdale.az.us))

**11. Intergovernmental Agreement (IGA) with Maricopa County to install Intelligent Transportation System infrastructure in Scottsdale.**

**Request:** Consider adoption of Resolution 6207 to authorize IGA number 2002-149-COS with Maricopa County to purchase, deploy and install Intelligent Transportation System infrastructure in the City of Scottsdale.

**Related Policies, References:** City Code, Chapter 17-21.

**Staff Contact(s):** Bruce Dressel, ITS Analyst, 480-312-2358, [bdressel2@ci.scottsdale.az.us](mailto:bdressel2@ci.scottsdale.az.us)

**12. Contract renewal for On-call Airport Planning and Engineering Services**

**Request:** Consider authorizing a one-year renewal of contract no. 2001-154-COS with Gilbertson Associates, Inc. to provide engineering services for Scottsdale Airport.

**Related Policies, References:** Contract No. 2001-154-COS; Scottsdale Procurement Code.

**Staff Contact(s):** Scott T. Gray, Aviation Director, (480) 312-7735, [sgray@ci.scottsdale.az.us](mailto:sgray@ci.scottsdale.az.us)

**13. WITHDRAWN - SEE PAGE 5**

**14. REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. SEE PAGE 6**

**14A. Authorize defense and indemnification of the City Attorney in civil rights and employment lawsuit.**

**Request:** Adopt Resolution No. 6220 authorizing the City to pay for the defense and indemnification of the City Attorney in the lawsuit filed as *John W. "Johnny" Guthrie v. The City of Scottsdale, David A. Pennartz, Scottsdale City Attorney, and David A. Pennartz and Lynette M. Pennartz*, U.S. District Court, District of Arizona, No. CIV02-2468-PHX-RCB.

**Staff Contact(s):** Deborah Robberson, Deputy City Attorney, 480-312-2405, [drobberson@ScottsdaleAZ.gov](mailto:drobberson@ScottsdaleAZ.gov)

COUNCILWOMAN LUKAS MOVED TO APPROVE CONSENT ITEMS 1-14A EXCEPT ITEMS 8, 13, AND 14. COUNCILMAN ECTON SECONDED THE MOTION WHICH CARRIED 7/0.

**WITHDRAWNAL**

**13. Amend the development fee code to clarify the intention of the non-residential development fee process.**

**Request:** Adopt Ordinance No. 3463, amending the City Water Code as it applies to procedural aspects of non-residential development fee collection and adopt Resolution No. 6175 making the amended City Water Code a public record.

**Staff Contact(s):** Rick Gregoire, Water Resources Analyst, 480-312-5684, [rgregoire@ci.scottsdale.az.us](mailto:rgregoire@ci.scottsdale.az.us)

**DRAFT**

**REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION**

**8. Sierra Estates Development Proposal**

**Request:** Develop an eighteen (18) lot single-family subdivision on a parcel of approximately 16.3 acres.

**Location:** SEC Via Linda & 138<sup>th</sup> Street

**Reference:** 23-PP-2001

**Staff Contact(s):** Jayna Shewak, Project Coordination Manager, 480-312-7059, [jshewak@ci.scottsdale.az.us](mailto:jshewak@ci.scottsdale.az.us)

Jayna Shewak, Planning, briefly introduced the item as a request for final plat approval. She described its location while noting that it is an 18-lot subdivision with one access from Via Linda. The parcel was rezoned in 1998 and essentially is the identical site plan that was proposed at that time. There is a major wash that divides the property with one crossing provided. Natural area open space is provided inside of the wash corridor. Staff recommends approval of the project subject to the stipulations of the preliminary plat.

Mayor Manross opened public testimony.

**Norwood Sisson**, 7431 E. Portland, questioned the ownership of the 6.1 acres of NAOS once the project is completed. He also requested clarification on the city's policy regarding credits for NAOS when the city owns the property.

Mayor Manross closed public testimony.

Ms. Shewak explained that the NAOS in this project would be dedicated to the homeowner's association that maintains all the common area on the property. She noted that this is a very common practice. In this particular situation, the city will not be receiving any type of a dedication. She stressed that since the city will not own the NAOS, the city's credit policy would not be impacted regarding this case.

COUNCILWOMAN LUKAS MOVED TO APPROVE ITEM 8 WHICH IS THE SIERRA ESTATES DEVELOPMENT FINAL PLAT. COUNCILMAN SILVERMAN SECONDED THE MOTION WHICH CARRIED 7/0.

**14. Contract Modification for design of Water Distribution Systems Improvements.**

**Request:** Authorize the second Contract Modification to Engineering Services Contract No. 2000-198-COS-B with David Evans and Associates, Inc. in the amount of \$95,142.00 for the design of additional Water Distribution Systems Improvements.

**Staff Contact(s):** Alison Boldt, Sr. Project Manager, (480) 312-7985, [aboldt@ci.scottsdale.az.us](mailto:aboldt@ci.scottsdale.az.us)

Councilman O'Hearn requested clarification on the status of the contract with David Evans and Associates. Alison Boldt explained that this is actually the third extension of the original contract that was before Council in December of 2000. The first contract modification was in December 2001 so this would be the second modification or the third and final year of the contract. She noted that originally, staff was anticipating a larger contract. She stressed that all the phases of the project are proceeding as planned, however, they are being sequenced according to priorities.

COUNCILMAN O'HEARN MOVED TO AUTHORIZE THE SECOND CONTRACT MODIFICATION TO ENGINEERING SERVICES CONTRACT NO. 2000-198-COS-B WITH DAVID

**DRAFT**

EVANS AND ASSOCIATES, INC. IN THE AMOUNT OF \$95,142.00 FOR THE DESIGN OF ADDITIONAL WATER DISTRIBUTION SYSTEMS IMPROVEMENTS. COUNCILMAN SILVERMAN SECONDED THE MOTION WHICH CARRIED 7/0.

## **REGULAR AGENDA**

### **15. Mountain View Plaza**

**Request** to approve:

1. An amendment to Development Agreement No. 1999-039-COS, and
2. Resolution No. 6176 adopting the above mentioned amendments.

**Location:** SEC Mountain View & Hayden Rd

**Reference:** 3-ZN-1999#2

**Staff Contact(s):** Kurt Jones, Project Coordination Manager, 480-312-2524, [kjones@ci.scottsdale.az.us](mailto:kjones@ci.scottsdale.az.us)

Kurt Jones introduced item 15 as a request to amend a development agreement that was attached to the shopping center located on the southeast corner of Hayden and Mountain View. As part of the rezoning case in 1999, the applicant made specific agreements with the C-2 zoning district in an attempt to expand the allowed uses.

Mr. Jones explained that many of the stipulations in the development agreement are very specific and difficult to enforce. The key points of concern as this case moved through the Planning Commission have been the proposal to utilize part of the center as a church and a previous request by the property owner to allow bars and cocktail lounges. He noted that the request to allow bars and cocktail lounges has been withdrawn as part of the application. He pointed out that there has also been concern raised regarding the applicant's request to change the wording in the use list to allow movie theaters through a conditional use permit with limited seating. Now the applicant is requesting that the movie theater would become a "by right" use the way it was written under the original C-2 zoning.

Mr. Jones explained that staff is recommending approval of the revisions.

Lynne Lagarde spoke as the applicant's representative reciting the history of the property. She explained that her clients purchased the property and terminated the Wild Oats lease since Wild Oats had located at a different location. By continuing the lease, the property would remain vacant. She pointed out that her clients have been approached by the New Vision Church that would like to locate in 87,050 sq. feet of the property.

She explained that the current restrictions are too limiting to allow appropriate businesses to locate at the center. As a result of some concerns from a small minority of neighbors, the Planning Commission limited the sanctuary size and the number of seats, added a stipulation that would prohibit the church from renting out the facility to large non-affiliated groups, and that would require the Development Review Board to ensure that the store front retail character of the building is maintained.

She expressed her client's desire to maintain the center as a successful neighborhood center. The owners are in negotiations with two major retail tenants. She explained that the owner hopes to put a retail anchor in the space, however, if negotiations break off, her clients do not want the space to remain vacant for another 4 or 5 years. Therefore, her clients are asking the Council's approval of the amended development agreement to remove the restrictions and help the center return to the vibrant center it has been in the past.

Councilman O'Hearn noted that this issue has been through the Planning Commission a few times. The first time, the Planning Commission asked the applicant to go back to the neighborhood to win more support. The second time, the Planning Commission expressed disappointment that the neighborhood outreach efforts hadn't happened. He requested that the applicant provide an update as to the neighborhood outreach that has been done.

Ms. Lagarde explained that she contacted all of the people who spoke at the Planning Commission meeting as well as a few others after the hearing. The individuals were invited to another meeting in which the applicant would review the proposed changes to the development agreement, the stipulations, and limitations on the sanctuary size. Only one person attended the meeting and was in support of her client's efforts. She noted that she could only assume that the stipulations that the Planning Commission put in place perhaps satisfied the objections.

Councilman O'Hearn expressed doubt that a church would be the anchor that would revive the center. He explained that smaller tenants usually depend on larger tenants to draw in customers. He failed to see how a church use would serve that purpose. Ms. Lagarde stressed that her client's first choice to utilize the vacant space is one of the two major retailers with whom are in discussions with her client. The problem is that the country is in challenging economic times in which negotiations might not be able to be finalized with either of the two major retailers. Rather than to have the space remain empty for an undetermined number of years, her clients would be entering into a lease to bring people into the center. Potentially, a 9,000 sq. ft. space would still be able to be utilized that is close to an anchor size business. She felt it is preferable to have the church locate in the center with classes and its bookstore to provide some activity in the center rather than leaving it empty.

Councilman Silverman questioned the length of the lease that the church would sign. Ms. Lagarde confirmed that discussions with the church have been for a five-year lease. She noted that her clients indicated that they are willing to add a lease buy-out provision in the lease with the church.

Councilman Ecton also expressed concern with how the church would generate enough traffic and appeal to bring customers to the center. He explained that the fact that the center appears to be run down bothers him. He questioned the plans for the center. Ms. Lagarde explained that the plans are definitely to renovate and refurbish the center as soon as a tenant is secured that would help capitalize those expenses.

Ms. Lagarde confirmed for Councilman Littlefield that the church is being considered as a tenant is due to the fact that the owner has not been able to attract other tenants. He asked Ms. Lagarde if it would have been possible for the owner to have found a larger retail tenant if the restrictions were removed. Ms. Lagarde confirmed that the owners had Ace Hardware interested in locating at the site, however, the restrictions made it impossible for them to lease the space. Ms. Lagarde stressed that although the owner would have been able to lease the property previously if the property weren't severely restricted, the owner also wants the option to lease to the church.

Councilman Littlefield agreed with the other Council members who expressed concern over the possibility of the church locating at the center even with the buyout clause.

City Attorney Pennartz confirmed for Councilman Silverman that the applicant could agree to add a provision to the development agreement stating that there shall be a buyout provision in any lease to a church.

Vice Mayor Ortega explained that this is a small neighborhood center that has some marketability challenges due to its age. He viewed the center as needing some cash flow to be able to reinvest in the

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property. He noted that the existing redevelopment agreement has a lot of awkward provisions in it. He explained that he sees the current restrictions as an obstacle for free market. He questioned if it is the city's job to police the type of businesses that can locate at the center down to the square footage allowed. He pointed out that the church would simply be a quiet use with some sort of commercial liability since they would conduct classes and have their own bookstore. The church would be a tax-paying member in a transitional use.

Councilwoman Lukas explained that in these difficult economic times, the city should allow the owner to try to generate some revenue in the interim while searching for retail uses.

Mayor Manross stated her belief that these types of centers are integral to the health of neighborhoods. Clearly the center has had a challenge since the area around it has had similar, competitive uses locate within a mile of the center. She stressed that her number one concern is that the center remain healthy. Secondly, she expressed concern that appropriate uses locate in the center that won't negatively impact the neighborhood. She explained that she views the church as though it were three different uses combined into one. She felt this type of use might bring people into the center.

Councilman Ecton expressed concern over allowing a movie theater without a conditional use permit since the building wasn't designed to restrict the noise that would be generated by this type of use. Ms. Lagarde suggested that the only type of theater that the center would have room for would be a dinner theater so she would be willing to add a limitation to the stipulations restricting the number of seats in a theater to a maximum of 500.

Councilman O'Hearn summarized the issues as: 1) the possibility of revisions to a development agreement setting a precedent, 2) the question of whether the city would be micro-managing businesses, 3) the question of whether approval of the amendments would remove the motivation for the owner to seek a retail tenant. He stated his belief that the owner would be jeopardizing the center's long-term future by seeking a short-term solution.

VICE MAYOR ORTEGA MOVED TO APPROVE AN AMENDMENT TO DEVELOPMENT AGREEMENT NO. 1999-039-COS, AND RESOLUTION NO. 6176 ADOPTING THE ABOVE MENTIONED AMENDMENTS WITH THE INCLUSION OF A PROVISION FOR A BUYOUT OPTION FOR THE CHURCH (AS LISTED BELOW) AND THE ADDITION IN SECTION 4i LIMITING THE SIZE OF A MOVIE THEATER TO FIVE HUNDRED (500) SEATS. COUNCILWOMAN LUKAS SECONDED THE MOTION WHICH CARRIED 6/1 (N.O.).

*4. C. The lease shall contain a buyout provision that may be exercised at the lessor's option to permit the space to be leased for permitted commercial uses.*

**16. Scottsdale Riverwalk Square**

**Request:** To approve

1. Site plan approval on a 9+/- acre parcel located at 4611 N Scottsdale Road with Downtown Regional Commercial Office, Type 2, Planned Block Development (D/RCO-2 PBD) zoning, and
2. Adoption of Ordinance No. 3482 affirming the above site plan approval.

**65-ZN-1992#4**

**Location:** 4611 N Scottsdale Rd

**Reference:** 65-ZN-1992#4

**Staff Contact(s):** Kurt Jones, Project Coordination Manager, 480-312-2524, [kjones@ci.scottsdale.az.us](mailto:kjones@ci.scottsdale.az.us)

Kurt Jones explained that item 16 is a request to approve a site plan for the site located northeast of the corner of Camelback and Scottsdale Roads. The site is mostly vacant with a building currently on the site that will be removed.

### Key Issues

- Planned Block Development
- Ensuring Pedestrian Connections
- Access
- Project that creates draw to waterfront/north

### Community Impact

- Revitalize
- Engage Scottsdale Road & canal bank
- Phase 1 of mixed-use project
- Height & Square footage

### Planning Commission Discussion & Recommendation

- Discussion:
  - Height, proposed design and number of buildings on the site
  - Enthusiastic about potential development along the canal bank and pedestrian improvements
  - One opponent spoke w/ regards height, traffic and uses
- Recommended approval, 6-0

### City Council Options

- Approve Site plan for Case 65-ZN-92 #4
- Continue case to allow for more information and public input
- Staff recommends approval with attached stipulations

John Berry spoke as a representative for the applicant. He stated that the property was rezoned to the Downtown Zoning category 14 years ago. He pointed out that last year Council supported changes to the stipulations that removed the stipulation requiring a hotel to be built on the property before other development. He explained that the site plan before Council would allow building in conformance with what has been anticipated on the front portion of the property since 1988. It is a site plan that is 38% less dense than was anticipated in the last iteration. He stressed that the elevation, design, and materials for the project will go through the Development Review Board process for approval. The residential piece in the back of the parcel will have to go back to the Planning Commission and Council for approval on the residential portion. He explained that there is a stipulation in the case that requires the entire canal bank along the property to be built out in the first phase of development. He urged Council to approve the site plan so the developer can move forward as quickly as possible.

Mayor Manross opened public testimony.

**Marc Hartley**, 4607 N. 74<sup>th</sup> Place, explained that his home is located behind the parcel. He expressed concern with the height of the project since he currently has a unique view Camelback Mountain that he wishes to retain.

**Norwood Sisson**, 7431 E. Portland, spoke regarding what he called the city's continuing gross negligence regarding storm water drainage. He listed a few projects that he felt were not properly regulated by the

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city and stated that the Camelback storm water drain that serves the area under consideration tonight is only good for a 5-year storm. He pointed out that the city is upgrading the drain so it will handle a 10-year storm although the requirements state that it should handle a 100-year storm. He noted that there is no requirement for this project to handle storm water other than dumping it into the storm drain.

Mayor Manross closed public testimony.

Mr. Berry explained that the developer would pay particular attention to Mr. Hartley's concern. He also noted that the project includes a stipulation under drainage and flood control that requires that on-site storm water storage is required for the full 100-year 2-hour storm event. The water will be stored on-site until capacity is available in the storm drain at which time, the water would be slowly released into the drain.

COUNCILMAN ECTON MOVED TO APPROVE THE SITE PLAN APPROVAL ON A 9+/- ACRE PARCEL LOCATED AT 4611 N SCOTTSDALE ROAD WITH DOWNTOWN REGIONAL COMMERCIAL OFFICE, TYPE 2, PLANNED BLOCK DEVELOPMENT (D/RCO-2 PBD) ZONING, AND ADOPTION OF ORDINANCE NO. 3482 AFFIRMING THE ABOVE SITE PLAN APPROVAL. VICE MAYOR ORTEGA SECONDED THE MOTION WHICH CARRIED 7/0.

**17. Foothills Overlay Zoning Map Amendment**

**Request:** Initiate Foothills Overlay zoning for the Desert Foothills area.

**Location:** Desert Foothills - 10+/- square miles bounded by Lone Mountain Road on the north, Happy Valley Road on the south, 96<sup>th</sup> St on the east, and 56<sup>th</sup> St on the west.

**Reference:** 621-PA-2002

**Staff Contact(s):** Jerry Stabley, Principal Planner, 480-312-7872, [jstabley@ci.scottsdale.az.us](mailto:jstabley@ci.scottsdale.az.us)

Randy Grant, Planning and Development Services, explained that item 17 is consideration by Council to give staff direction to continue to prepare an ordinance amendment. The ordinance would apply the zoning that is currently on the record as the Foothills Overlay District to an area of about 10 square miles. In 2001, the ordinance text creating the Foothills Overlay District was created, however, the district wasn't applied to any particular property. It was essentially a district that didn't have the force of law on the development of property in any part of the community.

This evening's request is to initiate the amendment that would apply those zoning criteria that are consistent with the approved design guidelines in the character area plan to 10 square miles generally located north of Jomax and south of Ashler Hills. Upon Council's direction, staff would proceed with the notification requirements and the property requirements that are necessary to continue with the zoning. It is staff's desire to receive direction and then present an ordinance amendment in spring for Council's consideration that would apply the zoning as an overlay.

Mr. Grant presented a brief slide presentation that has been summarized below.

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#### Proposed Action

- Initiate the Rezoning
- Application of the Foothills Overlay
- Part of the Tonto Foothills Strategic Plan

#### Background on Area Plan

- Desert Foothills Character Area
  - 10 Square Miles
  - Centered on Pima and Dynamite
- Desert Foothills Character Area Plan
  - Two Year Process
  - Major Public Involvement
  - Approved July 1999

#### Background on Overlay

- Creation of Foothills Overlay
  - Implement Area Plan
  - Ordinance Only
  - No Properties Rezoned
  - Amendment Approved February 2001

#### Goal of Foothills Overlay

- Maintain rural desert character of low density single family areas by limiting:
  - Building Heights
  - Walled Enclosure Areas
  - Size, Amount and Extent of Accessory Buildings
  - Outdoor Lighting
  - And by Achieving More Sensitive Design

#### Considerations

- Different than General Plan Amendment or Character Area Plan
- Implementation Involves Zoning Change

#### Options

- Initiate in the Desert Foothills
- Direct staff to return for an Initiation of other similar areas

Mayor Manross questioned if the building height restrictions would present any problems for schools to locate within the area due to the heights needed for gymnasiums and/or auditoriums. Mr. Grant explained that the regulations are essentially performance criteria that allows a 24' maximum height on a particular piece of property. It also allows for the ability to enlarge the building if the property is larger in size.

Essentially, height restrictions would be less stringent for a 10-acre property than it would be with a 1-acre property. Typical schools that don't have full size gymnasiums could fit within the 40' restriction. He noted that there would be instances with schools that would be perhaps difficult to fit unless they had a larger piece of property.

Councilwoman Lukas asked for clarification on the notification process. Mr. Grant confirmed that the process would include the city notifying every single property owner within the proposed area. Also, in response to questions from Councilwoman Lukas, Mr. Grant explained that the State Land Department indicated a willingness to comply with the Desert Foothills Character Area Design Guidelines although they didn't passively acknowledge that they would be willing to live with the regulations associated with the guidelines. The question remains open with the State as to whether or not they would oppose or support being included in the Foothills Overlay Zoning District. The city is continuing discussions with the State Land Department. He noted that they have been cooperative to date.

As requested by Councilwoman Lukas, Greg Keller identified himself as a Project Manager for the State Land Department. He confirmed that discussions are on-going between the city and the state regarding the state's willingness to have the regulations apply to the state land. The state is still formulating a position. He noted that the process to determine the state's position is a long process with a lot of input needed from the State Land Department and the public.

Mayor Manross opened public testimony.

**Jane Rau**, 8148 E. Dale Lane, explained that she has worked on a rural overlay for over 18 years. She hoped that the area is going to get the overlay that was promised for so long. She urged Council to support it.

**Tony Nelssen**, 7736 E. Redbird Road, spoke as a representative for the Desert Foothills Property Owners. He felt the process has gone on way too long. He pointed out that Council supported the Foothills Overlay unanimously 2 years ago. He explained that he doesn't see any reason why 40' height restrictions wouldn't accommodate a school although perhaps creative engineering would be required. He stressed the importance that all land in the proposed area be noticed and brought under the overlay. He pointed out that a lot of the character of the area has already been lost; therefore, it is important to retain and re-establish that character.

Mayor Manross closed public testimony.

Mayor Manross reminded everyone that the action tonight would be to initiate the application of the overlay in the Desert Foothills area. She stated her belief that it is important to maintain the equestrian character of the area.

VICE MAYOR ORTEGA MOVED TO INITIATE FOOTHILLS OVERLAY ZONING FOR THE DESERT FOOTHILLS AREA (CASE 621-PA-2002). COUNCILMAN SILVERMAN SECONDED THE MOTION WHICH CARRIED 7/0.

**Public Comment – NONE**

**City Manager's Report - NONE**

**Mayor and Council Items - NONE**

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**Adjournment**

With no further business to discuss, Mayor Manross adjourned the meeting at 7:00 P.M.

**SUBMITTED BY:**

  
\_\_\_\_\_  
Ann Eyerly, Council Recorder

**REVIEWED BY:**

  
\_\_\_\_\_  
Carolyn Jagger, Deputy City Clerk

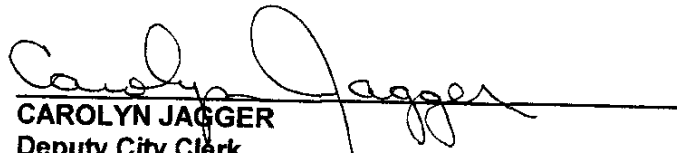
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**CERTIFICATE**

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular City Council Meeting of the City Council of Scottsdale, Arizona held on the 10th day of December 2002.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this 13<sup>th</sup> day of December 2002.

  
**CAROLYN JAGGER**  
Deputy City Clerk



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**MINUTES**

**SCOTTSDALE CITY COUNCIL**

**CITY COUNCIL MEETING**

**Monday, December 9, 2002**

**The Kiva  
City Hall  
Scottsdale, Arizona**

# DRAFT

**MINUTES  
SCOTTSDALE CITY COUNCIL  
CITY COUNCIL MEETING  
Monday, December 9, 2002**

**CALL TO ORDER (IN CITY HALL KIVA FORUM)**

Mayor Manross called to order the Regular Meeting of the Scottsdale City Council on Monday, December 9, 2002 in the Kiva, City Hall, at 5:08 P.M.

**ROLL CALL**

Present: Mayor Mary Manross  
Vice Mayor David Ortega  
Council Members Ned O'Hearn, Tom Silverman, Robert Littlefield,  
Wayne Ecton, and Cynthia Lukas

Also Present: City Manager Jan Dolan  
City Attorney David Pennartz  
City Clerk Sonia Robertson

**Presentation and Possible Motion to Call Executive Session**

Presentation regarding proposed property acquisition for advanced water treatment facility adjacent to the Central Groundwater Treatment Facility on Thomas Rd. between 86<sup>th</sup> St. and Pima Rd. and status of negotiations with owners' representative.

MOTION TO RECESS INTO EXECUTIVE SESSION, IF NEEDED, FOR LEGAL ADVICE AND TO CONSIDER IT'S POSITION AND INSTRUCT CITY STAFF REGARDING PROPERTY NEGOTIATIONS ON A 5-ACRE ± PARCEL (LAYHER, PARCEL NO. 130-39-001B) LOCATED 182 FEET NORTH OF THOMAS RD. BETWEEN 86<sup>TH</sup> ST. & PIMA RD. FOR AN ADVANCED WATER TREATMENT FACILITY (PROJECT W0205) AND POSSIBLE LITIGATION DIRECTION REGARDING CONDEMNATION. A.R.S. 38-431.03 (A) (3), (A)(4), AND (A)(7).

\*No Executive Session was held.

Assistant City Manager Roger Klingler briefly introduced the item as a property acquisition for a water treatment plant adjacent to the city's groundwater treatment plant at Pima Park.

Joe Gross explained that in the early 80's, industrial compounds were discovered in the city's groundwater in the southern part of the city. As a result, the EPA declared the area a superfund site. Three private firms are required to fund construction and operation of a central groundwater treatment facility (CGTF). The facility is located at 86<sup>th</sup> Street and Thomas Road and is fed by three groundwater wells. The water is treated and serves the area south of Indian School Road. The process that is used to remove chemicals from the groundwater is an air stripping process.

Some non-health related issues have resulted from the operation of the CGTF that impact the quality of water in the southern neighborhoods. The water is harder than other water and contains traces of nitrates. Although the nitrates are within health regulations, the presence of the chemical requires that the water is blended with other water.

As a result of the city's Master Plan efforts last year, a proposed cost effective method of improving water quality in the southern part of the city was developed. The method would involve taking a portion of the treated water after chemicals are removed (approximately 30%) and running it through a reverse osmosis process. The purified water is then returned to the main stream which, in essence, would reduce the chemical levels in the water without the necessity of treating 100% of the water.

The Master Plan also recommended a proposed site for the project. There are approximately 2.75 acres of vacant land adjacent to the groundwater treatment facility. He noted that City Council approved a concept design and a pilot program in accordance to the Master Plan in January. The pilot program has now been completed, thereby, validating the reverse osmosis process.

Mr. Gross displayed a conceptual drawing of the facility that is necessary to complete the reverse osmosis process on the water as described previously. The concept design has resulted in a proposed building layout on the adjacent parcel. He noted that the city did consider options to the proposed site including an adjacent city owned park. Due to 2-five million gallon underground reservoirs already in the park, the addition of this facility would render the park relatively useless.

Mr. Gross indicated that a letter has been sent to the property owner (in Germany) stating the city's desire to purchase their property for the facility. The property owner does not appear willing to negotiate regarding sale of the property.

Al Dreska explained that the parcel that the city desires to acquire for the new water treatment facility is a 2.74 acre parcel that is part of a larger 11.04 acre parcel. The remaining 8.3 acres has been developed for some time as a semiconductor manufacturing plant. The property is under a long-term lease that was initiated in 1967 and comes up for renewal in the year 2006.

The city initiated contact with the property owner's representative who operates locally. Mr. Dreska noted that the city has recently been contacted by legal representation for the owner indicating that the owners are unwilling to sell the parcel.

In late 2001, the city proceeded with an appraisal process indicating a value of \$1,015,750 for the 2.74 acres (\$8.50 per sq. ft.). The appraisal determined that no damages are indicated to the remaining 8.3 acres.

Mayor Manross explained that it is clear that the city needs the facility. She questioned if there have been real negotiations. She stressed that the city should earnestly try to negotiate with the owners before condemnation is considered. Attorney Pennartz explained that there hasn't been intensive negotiations since the property owners are not willing to sell the property voluntarily. He stated that the city has received a letter from the owners stating their position and unwillingness to sell the property.

Councilman Littlefield asked for clarification on the owners claim that the city's action would threaten expansion plans for the plant. Mr. Klingler explained that the city has not been privy to the details of the lease agreement between the property owner and the tenant.

Councilman Littlefield stated that if the city is concerned with employment in the community, the city should consider what impact the purchase of the parcel would have on the business that leases the other portion of the property.

In response to questions from Councilman O'Hearn, Mr. Klingler explained that the plant has been existence on the site since 1967 and manufactures semi-conductors. He noted that there are always other

options; however, the viability and costs associated with other parcels are factors that must be considered. In placing the water facility in the park, the park would not be useable. Putting the facility on some other vacant property would entail the city going to the expense of installing costly water lines to connect to the city's existing facility.

Councilman O'Hearn inquired if any of the surrounding property owners have any opinions on the proposed placement of the water facility. Mr. Klingler explained that the property owners to the north were aware when the development was constructed that the water facility might be expanded; however, noted that the city has not heard anything from any of the property owners regarding the proposed facility.

Attorney Pennartz responded to additional questions from Councilman O'Hearn. He explained that the letter received by the city from the owner's representative indicated that the present tenant might expand. He briefly summarized the letter's content for the record.

Ms. Dolan clarified that there is a part of the park that can be used for the water facility; however, use of the property would render the park virtually useless.

Mr. Gross pointed out that there is a possible vacant parcel ¼ mile east of Pima and Thomas Roads although he couldn't say for sure if the water facility would fit on the parcel. He stated that the problem is the cost that would be associated with connecting pipelines and the long-term energy costs for pumping the water. He noted that a remote site for the reverse osmosis facility would be a very costly option for the city.

Vice Mayor Ortega explained that the reverse osmosis project fits into the city's Master Water Plan. He stated that this project is part of a systematic upgrade of the city's water system. He compared the appraised value of the property with the purchase price of the land for the Chaparral Treatment Plant. He explained that the site must be contiguous with the storage, which would allow the city to maintain one security point. He viewed the appraised price of the land as a fair price. He pointed out that the facility is in line with the city's water plan, it would upgrade the water system in the southern part of the city, and in comparison with the purchase of the Chaparral property, the price is reasonable. He expressed his opinion that the city should move forward with negotiations. He pointed out that site elevation is not an issue with this type of facility.

Councilman Ecton questioned the risks involved with moving forward with condemnation proceedings. Attorney Pennartz explained that consideration of condemnation is not agendaized for this evening. He stated that the city does not have an appraisal from the property owners at this time. He explained that since the city has not investigated the possibility of condemnation, as of yet, the risks have not been fully explored. Strategy for condemnation would need to be discussed in an Executive Session since any such information discussed in public could be used in court.

In response to additional questions from Councilman Ecton, Attorney Pennartz explained that he cannot answer the question if the courts would be sensitive to the argument that the tenant needs the property for expansion. He felt any speculation would be premature at this time.

Councilman Ecton stated his support of further negotiation attempts with the property owners. He noted that if the city informed the property owners of the city's plans for the site, they might change their minds about selling the property. He explained that if this process failed, he would support condemnation proceedings.

Councilwoman Lukas questioned if the project is time sensitive. Mr. Klingler explained that although there is not a specific deadline, there is benefit to residents in improved water quality. He noted that there is a scaling problem with the water that impacts the city's meters that would be eliminated, thereby, benefiting the city also.

Councilwoman Lukas stressed that although the city needs the treatment facility, condemnation should be the last resort. She suggested further negotiations should proceed with the owner and the owner's representative.

Councilman O'Hearn pointed out that if the negotiations break down, the city would be faced with a serious situation of explaining why the parcel is needed when the city owns the park, which could be used for the facility. He suggested that if the negotiations break down, staff would need to provide Council with details on what is meant by "rendering the park useless".

## **Presentations/Information Updates**

### How Do You Serve Program

John Baird, Director of Service Learning with the Scottsdale School Districts, thanked everyone for their support. He briefly introduced students from the National Youth Leadership Center at Saguaro High School. In total, representatives from Coronado, Chaparral, Arcadia, and Desert Mountain High School were introduced and spoke briefly. The students described the programs and identified the events as well as the 5 high schools involved in various community projects. Framed posters were presented to Council, various staff and citizens while framed banners were then presented to others as a token of appreciation for their efforts in the events.

### Homeland Security Update

Assistant Chief of Police Dee Taylor presented the update in the form of a slide presentation which has been outlined below.

### **Post September 11, 2001**

#### **☀ *It's A Different World!***

- Personal vulnerability
- Economic ramifications
  - Stock market fall
  - Airline industry downturn
  - Tourist industry suffering
  - National, state, and local budgets struggling
- Cultural issues have arisen

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### **Federal Government Response**

Heightened security:

- Airports, sporting events, other high occupancy events
- Intelligence network assessments
- Federal response systems review
- Department of Homeland Security created.
- Federal Threat System created (5 color)

### **Is Scottsdale at "Risk?"**

Risk as it relates to TERRORISM ?

Risk as it relates to EMERGENCIES ?

What really is TERRORISM?

"The unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives."

### **Terrorist Origins:**

International Terrorists:

- Religious Groups
- Organized Crime
- Environmental / Animal Rights groups

Political / Ideological Issues

Domestic Terrorists:

- Religious Groups / Cults
- Right / Left Wing Groups
- Environmental / Animal Rights Groups
- Hate Groups
- Organized Crime / Gangs

And...

### **Terrorist Origins**

Individual Terrorists:

Special Issues:

- Mentally disturbed individuals who take on one or more of these issues as their cause.
- Focuses all their emotions on the outcome.

This issue poses a serious threat to public safety.

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### **Scottsdale Risk Levels**

Low to medium = terrorist incident.

- Low for an Al Quida event like WTC
- Medium for "Organized Crime."

Low to medium = victim of a crime.

- Low if vigilant and prepared
- Medium if careless

Medium to high = storm related event of damaging proportions.

- Monsoon storms occur every summer

### **Scottsdale Response Systems**

Emergency Safety and Preparedness Committee (ESAP) formed.

- Members represent all city departments.
  - 40 members
  - Rural Metro Fire Department
  - Scottsdale Center for the Arts
- Members have decision making authority.
- "Safety Officers" of the City.
- Mission statement created as a focus.

### **ESAP Accomplishments:**

Preparing for Emergencies:

- Facility security assessments have begun.
- City Emergency Operations Plan updated.
- Individual department Emergency Plans in development.
- Evacuation Plans for all city facilities created.
- City Identification Badge Program instituted.
- Suspicious substance / suspicious mail protocols developed and trained.

### **Preparing for Emergencies:**

- The City Emergency Operations Center (EOC) relocated.
- Critical City infrastructure assessed and modified, strengthened as needed.
- ESAP emergency notification system in development.
- Flood-Storm Warning System being developed.
- City Panic Alarm System being remodeled.

### **Responding to Emergencies**

- Evacuation drills conducted for all facilities.
- EOC Operations Manual created.
- EOC drill conducted with the ESAP Team.
- GM's trained in EOC operations.
- "City Watch" notification system acquired.

- Citizen Emergency Preparedness brochure distributed to all city households.
- On-going safety / emergency training for ESAP Team members – passed to work groups.
- "World Alert" notification system created for City employees.
- City web site modified.
- Computerized "Response Program" being developed by GIS.
- Shelter Plans tested.
- Tabletop exercises conducted at PD Quarterly Managers Meeting.
- Respirator mask program initiated in answer to anthrax threat.
- Basic Hazardous Materials training conducted with PD via video.
- Satellite phone purchased via grant for emergency communication.
- Additional hazardous materials equipment purchased for fire dept. via grant.
- New gas masks for all PD officers to be purchased via new grant.

#### **Recovering from Emergencies:**

Basic Y2K plans in place to form our "Business Resumption Plan."

Will be addressed with the completion of the Prepare and Respond initiatives.

#### **Community Outreach**

Emergency Preparedness focus:

- Chamber of Commerce partnership created.
  - Quarterly community educational opportunity.
- Renewed partnership with all Scottsdale Hospitals.
  - Quarterly "Preparedness" meetings.
  - Joint Drills
- Regular "Preparedness" meetings with General Dynamics.
  - Assisting with the creation of a PSA on emergency preparedness.
- Community presentations as requested.
- Assisting with the community medical action team initiative.
- Looking for opportunities to begin the federal "Citizen Corp" program.

#### **Our Future Challenges**

- Find alternate funding opportunities given the state of the city budget.
- Maintain critical communications links.
- Prepare and train to meet the new threats:
  - Biological
  - Chemical
  - Radiological
  - Nuclear
- Continue to work through the ESAP Team to improve employee awareness.
- Sustain the internal energy and drive for our Homeland Security initiatives.
- Creation of a comprehensive "Business Resumption Plan."
- Continue to create "Key" partnerships and keep them alive.

#### **TRAIN - TEST – ADAPT - ADJUST**

Our ultimate commitment is to create and sustain a SAFE future.

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Councilman Ecton stated his belief that no one is in the low risk category. He suggested that the city develop a reverse 911 system that would automatically call homeowner associations, key neighborhood leaders, etc. in the event of an emergency. Chief Taylor explained that the city has purchased a system called City Watch that is computer based and enables staff to identify large geographic areas where staff can then call residents using a bank of telephones. She noted that the city would look at enhancing the system in the future.

Councilwoman Lukas thanked Chief Taylor for the report and noted that she requested the update after several citizens expressed their concern regarding the city's security efforts. She stressed that security is one of the vital services the city provides. She urged city staff to continue their efforts especially in the community outreach area.

In response to questions from Councilwoman Lukas, Chief Taylor explained that she would try to acquire any funding she could identify. She noted that matching funding grants would be more difficult to get approval considering the state of the economy; therefore, she would try to acquire "no match" funds wherever possible. Chief Taylor explained that although Congress enacted the new Homeland Security Department, it failed to appropriate a budget for its operation. She pointed out that the budget should be appropriated in January.

Councilwoman Lukas inquired about the status of trying to ensure that all cities communication links are compatible. Chief Taylor confirmed that interoperability is important. It has been a struggle for many years and will continue to be because of the costs associated with refining the systems. She pointed out, however, that Tempe constructed a piece of equipment that allows different responding agencies for any one event to plug into a central operations trailer that enhances communication. Due to the city's participation in the Mutual Aid Program, the equipment would be available for the city's use in the event of an emergency.

Vice Mayor Ortega clarified that the City is actually compiling a hometown security plan. He pointed out that there were two measures that were recently funded to improve security within the city including additional security (surveillance equipment) at Scottsdale Airport and security for the city's water supply system. He stressed that the city must rely on its own assets due to state funding challenges.

Councilman Ecton requested that Chief Taylor compile a list of the matching fund opportunities that she identifies so Council can review the list and make decisions based on the information.

### **Announcement**

Mayor Manross congratulated City Attorney Pennartz for recently receiving an AV rating with Martindale-Hubbell, which is an organization that serves the legal community nationwide. The award identifies Attorney Pennartz as a lawyer with high to preeminent legal ability, is a reflection of his expertise, integrity, and overall professional excellence.

### **Boards, Commissions and Committees**

Before nominations for each commission, Vice Mayor Ortega briefly identified the appropriate commission and its purpose along with any special qualifications for the vacant position, if any.

**DRAFT**

Airport Advisory Commission (1)

Vice Mayor Ortega opened the floor for nominations.

Councilwoman Lukas nominated Thomas Guilfooy

With no further nominations, Vice Mayor Ortega closed the floor for nominations.

**Thomas Guilfooy** was appointed to the Airport Advisory Commission by a unanimous vote.

Vice Mayor Ortega requested that the email from Guy Stepanski (copy attached) listing the reason for his resignation be included in the minutes for public record.

Tourism Development Commission (3)

Vice Mayor Ortega opened the floor for nominations.

Councilman Silverman nominated Thomas Morris

Councilman Ecton nominated Shawn Robinson

Councilwoman Lukas nominated Sally Shaffer

With no further nominations, Vice Mayor Ortega closed the floor for nominations.

**Thomas Morris** was reappointed to the Tourism Development Commission by a unanimous vote while **Shawn Robinson** and **Sally Shaffer** were appointed to the commission by a unanimous vote.

Citizens Budget Committee (14)

Vice Mayor Ortega opened the floor for nominations.

Councilman Ecton nominated Dan Basinger for a 1-year term

Councilman Ecton nominated Marion Murray for a 2-year term

Mayor Manross nominated Toni Sage for a 1-year term

Mayor Manross nominated Larry Beckner for a 2-year term

Councilman Littlefield nominated Lyle Wurtz for a 1-year term

Councilman Littlefield nominated Steven Springborn for a 2-year term

Councilwoman Lukas nominated Roger Wittal for a 1-year term

Councilwoman Lukas nominated William Chamberlain for a 2-year term

Councilman O'Hearn nominated Bruce Mason for a 1-year term

Councilman O'Hearn nominated Ray Price for a 2-year term

Councilman Silverman nominated Donald Raiff for a 1-year term

Councilman Silverman nominated Sharon Alexander for a 2-year term

Vice Mayor Ortega nominated Judith Frost for a 1-year term

Vice Mayor Ortega nominated June Wesbury for a 2-year term

Having received two nominations per Council member, Vice Mayor Ortega closed the floor for nominations.

**Dan Basinger, Toni Sage, Lyle Wurtz, Roger Whittal, Bruce Mason, Donald Raiff, and Judith Frost** were appointed to a 1-year term on the Citizens Budget Committee by a unanimous vote.

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**Marion Murray, Larry Beckner, Steven Springborn, William Chamberlain, Ray Price, Sharon Alexander, and June Wesbury** were appointed to a 2-year term on the Citizens Budget Committee by a unanimous vote.

### **Public Comment**

**Bunny Cremeens**, P.O. Box 5801, Carefree, spoke in order to bring attention to a problem are along the southern edge of Stagecoach Pass east of Pima Road. She explained that the installation of a water line two years ago destroyed the plants, trees, and cactus that were along the roadway. Due to a lack of an irrigation system or manual watering, attempts to restore the plant life have not been successful. She requested Council's assistance in resolving the issue.

## **CONSENT AGENDA      ITEMS 1-8**

- 1. Concessionaire License for Copier/Printer Services at Scottsdale Public Libraries.**  
**Request:** Adopt Resolution No. 6189 authorizing Concessionaire License Agreement No. 2002-119-COS with Card Meter Systems ("CMS"), Inc. to install and maintain coin- and debit card-operated photocopying and computer printing services at all Scottsdale Public Libraries.  
**Related Policies and references:** The 1998 Resolution No. 5146, authorizing license agreement No. 980122 with Integrated Campus Solutions, a division of IKON Office Solutions, to provide similar services to the libraries. This agreement expires in January 2003.  
**Staff Contact(s):** Debbie Tang, Library Special Projects/Facilities Manager, 480-312-2040, [dtang@ci.scottsdale.az.us](mailto:dtang@ci.scottsdale.az.us); Ron King, Asset Management Coordinator, 480-312-7042, [rking@ci.scottsdale.az.us](mailto:rking@ci.scottsdale.az.us).
- 2. City's Major Emergency Operations Plan**  
**Request:** Approve Resolution # 6181 rescinding Major Emergency Response Plan Adopted 7/6/1999 and Adopt Revised Major Emergency Operations Plan dated 12/02.  
**Staff Contact(s):** Marc Eisen, Emergency Services Director, 480-312-7999, [meisen@ci.scottsdale.az.us](mailto:meisen@ci.scottsdale.az.us)
- 3. Department of Justice Domestic Preparedness Equipment Grant.**  
**Request:** Adopt Resolution No. 6180, authorizing the City of Scottsdale to accept a Department of Justice Domestic Preparedness Equipment Grant to purchase equipment and technology to upgrade the City's ability to respond in a coordinated effort with other Valley cities to any incidents involving the use of hazardous materials. Authorize the acceptance of the grant award by the Bureau of Justice Assistance, Department of Justice, resulting in a total, non-matching, grant amount of \$85,000; and Authorize the establishment of Grant No. 2002-TE-CX-0142 for the purpose of receiving the grant funding.  
**Related Policies, References:** None  
**Staff Contact(s):** Marc Eisen, Emergency Services Director, 480-312-7999, [meisen@ci.scottsdale.az.us](mailto:meisen@ci.scottsdale.az.us)
- 4. Amendment to Intergovernmental Agreement with Fountain Hills Sanitary District**  
**Request:** Adopt Resolution No. 6173 authorizing the Mayor to enter into Agreement No. 2000-005-COS (A) with Fountain Hills Sanitary District.  
Authorize Agreement No. 2000-005-COS (A).  
**Related Policies, References:**

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- Arizona Revised Statutes (A.R.S). § 11-952, A.R.S. § 48-2011.
- Article 1, Sections 3 and 3-1 of the City of Scottsdale Charter.
- Original agreement (2000-005-COS) with Fountain Hills Sanitary District dated April 3, 2000
- First amendment (COS Resolution No. 5617) to the original agreement dated December 4, 2000.

**Staff Contact(s):** Doug Mann, Sr. Water Resources Engineer  
480-312-5636 [dman@ci.scottsdale.az.us](mailto:dman@ci.scottsdale.az.us)

**5. Mustang Library Study Room Addition.**

**Request:** Authorize construction bid award number 03PB018 for the construction of the Mustang Library Study Room Addition to Valley Diamond Builders, the lowest responsive bidder, at their lump sum bid of \$96,800 and authorize a CIP budget transfer in the amount of \$34,000 from Sonoran Hills Park (CIP Acct. No. 400-P0213) to Mustang Library Study Room Addition (CIP Acct. 400-P0201). **Related references and policies:** Development Review (Case #204-SA-2001) staff approval, December 14, 2001; Library Advisory Board approval, May 15, 2002; Citizen Bond Commission review and recommendation for budget transfer, July 11, 2002.

**Staff Contact(s):** Tom Howcroft, Contracts Coordinator, (480) 312-2166, [thowcroft@ci.scottsdale.az.us](mailto:thowcroft@ci.scottsdale.az.us); Carol Damaso, Senior Library Coordinator, Mustang Library, (480) 312-6031, [cdamaso@ci.scottsdale.az.us](mailto:cdamaso@ci.scottsdale.az.us)

**6. REMOVED FOR SEPARATE DISCUSSION. SEE PAGE 12**

**7. Acquisition of the State Land Department Outer Loop Drainage Basin**

**Request:** Authorize the City Manager to initiate negotiations with the State Land Department for the potential acquisition of the Outer Loop Drainage Basin, consisting of approximately 53 acres, for the purpose of flood control and potential recreational use.

**Related Policies, References:** City Procurement Code..

**Staff Contact(s):** Ed Gawf, Deputy City Manager, [egawf@ci.scottsdale.az.us](mailto:egawf@ci.scottsdale.az.us); (480) 312-4510.

**8. Authorize Settlement of Property Loss and Due Process Claim**

**Request:** Consider approval of settlement of \$60,000 in claim filed against the City.

**Related Policies, References:** Resolution No. 6212, Settlement Agreement No. 2002-151-COS.

**Staff Contact(s):** Michael Mason, Risk Management Claims Manager, 480-312-2490, [mmas@ci.scottsdale.az.us](mailto:mmas@ci.scottsdale.az.us); Sherry R. Scott, Assistant City Attorney, 480-312-2405, [sscott@ci.scottsdale.az.us](mailto:sscott@ci.scottsdale.az.us)

COUNCILMAN SILVERMAN MOVED TO APPROVE ITEMS 1-8 WITH THE EXCEPTION OF ITEM 6. VICE MAYOR ORTEGA SECONDED THE MOTION WHICH CARRIED 7/0.

**ITEMS REMOVED FOR SEPARATE DISCUSSION**

**6. Adopt Economic Vitality Strategic Plan**

**Request:** Formally adopt the final draft of the "Economic Vitality Strategic Plan: 2002-2004" to serve as the guiding framework for the City's actions to create long-term economic sustainability.

**Staff Contact(s):** David Roderique, Economic Vitality General Manager, 480-312-7601, [droderique@ci.scottsdale.az.us](mailto:droderique@ci.scottsdale.az.us)

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Councilman Ecton noted that although he supports the plan, he wanted to suggest that the plan include a prioritized list of what should be done and the methods that could be used to accomplish the city's goals.

Ms. Dolan agreed that the plan is very extensive. She confirmed that some actions items have been included; therefore, the action plan will be refined to support the strategic endeavors. Through the budget process, staff will present their recommended priority list which Council could revise as they so desired.

Vice Mayor Ortega noted that it is important to have a guideline to provide some accountability.

COUNCILMAN ECTON MOVED TO ADOPT THE ECONOMIC VITALITY STRATEGIC PLAN TO SERVE AS THE GUIDING FRAMEWORK FOR THE CITY'S ACTION TO CREATE LONG-TERM ECONOMIC SUSTAINABILITY. VICE MAYOR ORTEGA SECONDED THE MOTION WHICH CARRIED 7/0.

## **REGULAR AGENDA**

### **9. 2003 Legislative Program.**

**Request:** Adopt the City of Scottsdale 2003 Legislative Program to provide policy direction to the Intergovernmental Relations Office regarding positions on issues to be discussed during the State of Arizona's 2003 Legislative Session.

**Staff Contact(s):** Steve Olson, Government Relations Director (480) 312-2423, [solson@ci.scottsdale.az.us](mailto:solson@ci.scottsdale.az.us)

Steve Olson introduced the item for discussion with a brief slide presentation that has been outlined below. The proposed document will be used as an opportunity to explain to the new legislators what the Council's positions are and what areas staff will be concentrating on. Staff is looking for guidance from Council in terms of what the issues are and the method(s) Council would like staff to use to lobby for them.

#### **CITY OF SCOTTSDALE 2003 Legislative Program**

#### **THE 46<sup>th</sup> LEGISLATURE**

- Many new legislators: 16 New Senators, 33 New Representatives
- Both houses dominated by Republicans
  - 39 to 21 in the House
  - 17 to 13 in the Senate
- A New Democratic Governor
- Dominated by Budget Issues: \$1 billion Shortfall

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## LEGISLATIVE FOCUS AREA

Driven by Mission and Goals set forth by the City Council

Municipal Legislative Principles

- Neighborhoods
- Preservation
- Transportation
- Economy
- Fiscal and Resource Management
- Open and Responsive Government

## MUNICIPAL LEGISLATIVE PRINCIPLES

Preserve and enhance the City's ability to deliver quality and cost-effective services to Scottsdale citizens and visitors.

Preserve and enhance the City's ability to address quality of life issues – clean and safe neighborhoods, adequate social services, and preservation of natural amenities – for Scottsdale Citizens.

Preserve and enhance our City Council's ability to serve Scottsdale citizens by retaining local decision making authority and maintaining fiscally balanced revenue sources.

Councilman Silverman requested changes to the tourism section on page 3. In place of the current paragraph, Councilman Silverman suggested the following verbiage.

*“Support initiatives to enhance Arizona and Scottsdale's market share of national travel and tourism visitation and spending. Work with other communities to ensure that the state's statutory funding formula(s) for tourism promotion and development be insulated from budget cutting measures. In particular, work with other Maricopa County communities to gain restoration of full funding of Proposition 302 tourism promotion monies, as approved by the voters of Maricopa in November 2000. Support initiatives to improve and expand the operations of the Arizona Office of Tourism. (NOTE: These Proposition 302 funds are raised as a negotiated additional tax burden on hotels in Maricopa County, and are intended for the promotion of the County with/through the local communities (CVBs). Since the pass through the Arizona Office of Tourism, they have been subjected to reduction (50%) by legislative action in the current budget deficit dealings.)*

Mr. Olson agreed with the proposed change. He felt that it clarifies one of the issues that is so important to the community, i.e. tourism.

Councilwoman Lukas stated her support of the proposed change. She suggested an addition under the Transportation Planning section at the end of the paragraph which reads “...oppose legislation that limits regional coordination and local control of regional transportation planning.” The additional sentence would read, “*Support regional air space planning.*”

In response to questions from Councilman O'Hearn, Mr. Olson explained that city funding could be an easy target for the legislature. He noted, however, that a number of people in leadership positions have made commitments not to take state shared revenues away from cities. He stressed that the city must recognize that there will be a very intense negotiating process. He also pointed out that the League of

Arizona Cities and Towns is the body that pulls municipalities together to work towards common goals including protecting state shared revenues.

Mayor Manross explained that it is important to get the message across that the city wants to keep state shared revenues at the local level where they can be used most effectively.

VICE MAYOR ORTEGA MOVED TO ADOPT THE CITY OF SCOTTSDALE 2003 LEGISLATIVE PROGRAM TO PROVIDE POLICY DIRECTION TO THE INTERGOVERNMENTAL RELATIONS OFFICE REGARDING POSITIONS ON ISSUES TO BE DISCUSSED DURING THE STATE OF ARIZONA'S 2003 LEGISLATIVE SESSION WITH THE CHANGES AS LISTED BELOW. COUNCILMAN ECTON SECONDED THE MOTION WHICH CARRIED 7/0.

Replace the tourism paragraph on page 3 with the following verbiage:

*"Support initiatives to enhance Arizona and Scottsdale's market share of national travel and tourism visitation and spending. Work with other communities to ensure that the state's statutory funding formula(s) for tourism promotion and development be insulated from budget cutting measures. In particular, work with other Maricopa County communities to gain restoration of full funding of Proposition 302 tourism promotion monies, as approved by the voters of Maricopa in November 2000. Support initiatives to improve and expand the operations of the Arizona Office of Tourism. (NOTE: These Proposition 302 funds are raised as a negotiated additional tax burden on hotels in Maricopa County, and are intended for the promotion of the County with/through the local communities (CVBs). Since the pass through the Arizona Office of Tourism, they have been subjected to reduction (50%) by legislative action in the current budget deficit dealings.)"*

Add a sentence to the paragraph on transportation planning which currently ends with, "...oppose legislation that limits regional coordination and local control of regional transportation planning.". The additional sentence would read, *"Support regional air space planning."*

#### **10. Regional airspace planning.**

**Request:** Per the request of Councilman Ecton, discuss options and provide direction for how to raise the City's presence and collaboration in regional air space planning.  
Staff Contact(s): **Scott Gray, 480-312-7735, [sgray@ci.scottsdale.az.us](mailto:sgray@ci.scottsdale.az.us)**

John Little, Transportation, explained that this item was placed on the agenda at the request of Council to provide direction towards developing a strategic plan for a more effective approach to regional airspace planning. He acknowledged that a better effort is needed in the area of regional airspace planning. He noted that there are many groups involved in the effort and listed a few groups for the record. He stated that the area is in need of regional airspace planning that would involve 13 airports.

Mayor Manross stated her belief that the city has been proactive in the last few years to try to create plans that positively impact the city and its neighboring communities. She stressed that regional planning is the only real solution to the problems involving airspace. She pointed out that Senator McCain has mentioned that he did not want to get involved with lawsuits regarding airspace issues.

Councilman Ecton agreed that there are many groups working on different aspects of the airspace issue, however, it is difficult to see real results. He felt the city needs to do something to make the groups more productive by developing a plan with direction and goals. He submitted a draft (copy attached) outlining the goals and details of a Council sub-committee to address aviation issues that he would like to see

assembled. He suggested that John Little and Steve Olson be involved in the committee that would be appointed by Mayor Manross.

Councilman Ecton explained his disappointment when he looked at the Governor's Advisory Council website since they have only conducted two meetings this year with no minutes available on the Internet.

Although he acknowledged that regional airspace planning is important, he suggested some other topics of discussion for the group to address some of the issues currently impacting the city. For example: "Must the city allow training at the airport?", "Can fees be raised for certain types of aircraft at the airport?", etc.

Mayor Manross explained that the Governor's Advisory Council is a result of the Vision 21 Transportation Taskforce. The group has been frustrated because they do not have a budget allocated to them, thus, the group hasn't been productive. She suggested that the city try the lobbying route in Washington since the Air 21 reauthorization will have some dollars attached to it.

Councilman Littlefield questioned one of the goals for the committee as listed by Councilman Ecton. He felt that the city has the information about which areas of the city are most impacted by the air traffic noise. Mr. Little confirmed that the city has the information and has a study in the works to update the information by conducting a 150 Noise Study. Ms. Dolan clarified that there are two issues involved with aircraft noise within the city including: 1) the noise associated with the city's airport, and 2) the noise impact from Sky Harbor on the southern part of the city.

Mr. Little confirmed for Councilman Littlefield that the city regularly sends city staff as representatives to various groups involved in air traffic challenges and solutions. He confirmed that to his knowledge, there is no group meeting on the issue that the city doesn't participate in. He noted that as requested by Council, staff would ensure that Council receives regular updates and minutes from meetings held regarding this issue.

Councilman Ecton stressed the importance of a strategic plan for regional planning that is communicated to the public.

Vice Mayor Ortega suggested that perhaps the duties of the city's Airport Advisory Commission could be expanded to address some of these issues rather than creating another commission. Mr. Little explained that the Airport Advisory Commission has been kept abreast of the aircraft noise within the city although they have historically dealt with aviation issues associated with the city's airport.

Vice Mayor Ortega expressed his opinion that a lot of the noise in the northern part of the city is related to the Deer Valley Airport departures and aviation students. He agreed that there needs to be some type of communication between airports to find solutions to the training issue, perhaps over an uninhabited area of the desert. He felt that some of the noise would be eliminated as the Stage 2 jets are retired and Stage 3 jets are used which are more fuel efficient and quieter. He stressed his belief that the market would dictate that this occur in the future.

Councilwoman Lukas explained that the city must build on the work that has been done in the past since regional airspace planning is important. She expressed concern over the long-term effects of possible development of Sky Harbor Airport. She stated that the city is in need of both short and long-term strategies and that the updates/minutes staff will now provide to Council from the various group meetings will be useful to Council. She encouraged the city to network more with neighboring cities both as a regional effort and an informational basis. She stated her support of the idea of a Council subcommittee

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since she didn't believe the Airport Advisory Committee's mission should be expanded. She noted that she distributed information to Council regarding the National Organization to ensure a Sound Controlled Environment group since she felt the \$1,900 per year enrollment fee would be well worth the money. She suggested that Council consider joining the organization at a future date.

Councilman O'Hearn likened the air space situation to a board game with the chips unevenly distributed. He stated his belief that currently there is no motivation to engage in serious discussions. He felt it was encouraging to hear that there is a willingness among municipalities to band together to develop acceptable solutions since there isn't much progress being derived from the various groups. He expressed his belief that the subcommittee that was suggested would provide new energy and focus attention to the issues that impact Scottsdale. He encouraged other municipalities to create subcommittees as well.

Councilman Silverman agreed that the next step, which is needed, is to create a subcommittee.

Councilman Littlefield suggested that perhaps answers to the various questions that have been answered were not communicated. He asked Mr. Gray to summarize in a memo to Council the Federal laws and regulations that limit the city's ability to restrict airport operations. He noted that the problem is that some of the city's citizens are unhappy with the air traffic issues and have approached various Council members although the issues are Federal issues and are out of Council's control. He explained that the city doesn't have a clear strategy since times have changed. In the past, the airport was considered a way to foster economic growth while today, some citizens associate the airport with noise. He explained that one citizen group in particular wants to close the city's airport and stressed that this will not happen.

Mayor Manross opened public testimony.

**Al Hoffman**, 10242 N. 125<sup>th</sup> Street, spoke as a representative of CCANN (Coalition Concerned About Aircraft Noise). He encouraged the city to develop an aviation action plan. He noted that the community has experienced many changes due to over flights since the NW2000 Plan was implemented. He commended Council for becoming proactive and requested that Council consider the best interests of the residents rather than the economic interest of the airport.

**Lyle Wurtz**, 6510 E. Palm Lane, explained that what bothers him the most is that only one part of the city is most vocal and wants everyone else to bear the brunt of the aircraft noise. He suggested that the wealthy actually have more responsibility for the aircraft noise due to their part in the population growth of the area and the fact that wealthy individuals are more likely to fly in corporate jets. He questioned if everyone would be happy if more airlines were in bankruptcy. He stated his belief that money and connected interests should not be given preferences.

Mayor Manross closed public testimony.

After Council received a legal opinion from City Attorney Pennartz regarding their ability to create a subcommittee based on the Councilman Ecton's draft outline, a motion was made and a vote was taken.

**COUNCILMAN ECTON MOVED TO DIRECT STAFF TO USE THE DRAFT OUTLINE TO ASSIST COUNCIL TO FORM A COUNCIL SUBCOMMITTEE, APPOINTED BY THE MAYOR, TO ADDRESS AVIATION ISSUES. COUNCILMAN SILVERMAN SECONDED THE MOTION WHICH CARRIED 7/0.**

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**11. Scottsdale Road improvements, i.e. right-of-way acquisition and agreement with the Town of Paradise Valley to bury existing power lines.**

- **Request:** Consider adoption of Ordinance No. 3480 authorizing annexation of a twenty-five foot width of territory contiguous to the City of Scottsdale along the west side of Scottsdale Road from Indian Bend Road north to Mountain View Road. AND, Adopt Resolution No. 6202 approving IGA Amendment 96-0001A to Intergovernmental Agreement No 96-0001 to provide for the underground conversion of existing 69 kV electric lines along Scottsdale Road from Indian Bend Road to Doubletree Ranch Road as part of the widening and reconstruction of Scottsdale Road between Indian Bend Road and Gold Dust Avenue. This amendment, if approved, would not become effective until, and is contingent upon, Paradise Valley Town Council approval of this amendment.
- **Related Policies, References:**
- Intergovernmental Agreement No. 96-0001 between City of Scottsdale and Town of Paradise Valley (Approved 2/5/96 by Scottsdale City Council).
- De-annexation Ordinance (Approved 11/7/02 by Paradise Valley Town Council).  
Staff Contact(s): Alex McLaren, Construction and Design Director, (480) 312-7099, [amclaren@ci.scottsdale.az.us](mailto:amclaren@ci.scottsdale.az.us)

Ms. Dolan explained that this item has been a long-standing matter between Scottsdale and Paradise Valley to widen Scottsdale Road from Indian Bend Road to Doubletree.

Al Dreska, Municipal Services, explained that item 11 calls for two actions including adoption of an ordinance to annex a 25' strip of land (2.5 miles) all of which is held as public right-of-way and Council's consideration of an amendment to a 1996 IGA relating to the widening and reconstruction of Scottsdale Road from Indian Bend north to Gold Dust (2 ¾ miles).

Mr. Dreska explained that the project has been in various stages of planning for many years. The actions before Council tonight would be events that would allow the city to proceed with construction of the project. The first phase of the project relating to utility relocation and wall construction is tentatively scheduled to be presented to Council immediately next year (2003) followed by two major construction projects sequenced to occur over the next 2 summers.

VICE MAYOR ORTEGA MOVED TO **ADOPT** ORDINANCE NO. 3480 AUTHORIZING ANNEXATION OF A TWENTY-FIVE FOOT WIDTH OF TERRITORY CONTIGUOUS TO THE CITY OF SCOTTSDALE ALONG THE WEST SIDE OF SCOTTSDALE ROAD FROM INDIAN BEND ROAD NORTH TO MOUNTAIN VIEW ROAD AND **ADOPT** RESOLUTION NO. 6202 APPROVING IGA AMENDMENT 96-0001A TO INTERGOVERNMENTAL AGREEMENT NO 96-0001 TO PROVIDE FOR THE UNDERGROUND CONVERSION OF EXISTING 69 KV ELECTRIC LINES ALONG SCOTTSDALE ROAD FROM INDIAN BEND ROAD TO DOUBLETREE RANCH ROAD AS PART OF THE WIDENING AND RECONSTRUCTION OF SCOTTSDALE ROAD BETWEEN INDIAN BEND ROAD AND GOLD DUST AVENUE. THIS AMENDMENT, IF APPROVED, WOULD NOT BECOME EFFECTIVE UNTIL, AND IS CONTINGENT UPON, PARADISE VALLEY TOWN COUNCIL APPROVAL OF THIS AMENDMENT. COUNCILMAN SILVERMAN SECONDED THE MOTION. COUNCILMAN SILVERMAN SECONDED THE MOTION WHICH CARRIED 7/0.

**12. Policy implications of purchasing seven vintage-style trolley buses for use Downtown**

**Request:** Consider authorizing the Transportation Department to procure seven trolley buses for \$2.1 million, to replace leased trolleys currently used on the Scottsdale Roundup. With this authorization, new trolleys can be placed in service beginning Fall 2003. If authorized, the trolley

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purchase will be funded by 80 percent federal grant funds (\$1,680,000) and 20 percent matching funds (\$420,000) from the transportation .2% privilege tax revenue.

**Related Policies, References:** Resolution 6029; City Procurement Code

**Staff Contact(s):** Michelle Korf, Transportation Planning Director, (480) 312-2638, [mkorf@ci.scottsdale.az.us](mailto:mkorf@ci.scottsdale.az.us); Debra Astin, Transit Planner, (480) 312-2526, [dastin@ci.scottsdale.az.us](mailto:dastin@ci.scottsdale.az.us)

Michelle Korf, Transportation, introduced item 12 with a brief slide presentation that has been outlined below.

Authorize procurement of seven trolley buses for \$2.1 million to replace leased trolleys

**Considerations:**

- Assumes continued operation of downtown trolley
- Level of service
- Purchased versus leased trolleys
- Free Fare
- Number of vehicles
- Vintage-style vehicles

**Trolley History**

- A free downtown shuttle has operated for over ten years, providing access to Scottsdale restaurants, shops and galleries
- Free shuttles serve Tempe/Phoenix/Glendale
- A privately operated resort trolley system ceased operations three years ago

**Public Input**

- Downtown Task Force Recommendation
- Stakeholders Committee Reviewed
  - Existing trolley route
  - Design of trolley vehicles
- Committee Recommendations
  - New trolley route
  - Small scaled, "vintage-style" vehicles
  - Authentic, high-quality materials
  - Expand service as resources allow

**Budget Impacts**

- \$290,000 annual operating budget (November thru May) includes vehicle maintenance
- Federal grant for new trolleys approved by City Council in March 2002
- 20% City match (\$420,000) funded by Transportation 0.2% tax
- Replacement cost (\$31,000) budgeted annually (General Fund)

Ms. Korf explained that the proposal includes the purchase of 7 vehicles. Four would be operating on the shuttle route at 10-minute intervals, 2 would be used as spares during maintenance of the regular vehicles, and the last vehicle would be used when capacity issues are experienced.

Councilman Silverman questioned if Federal funds are assured, what warranties would be in place on the vehicles, what the life span is for the trolleys, and why the vehicles won't be traveling down Scottsdale Road. He stated his belief that the trolley route should go by the Galleria. Ms. Korf confirmed that Federal funds are available for up to 15 trolleys. The trolleys are under warranty for parts and labor, however, Ms. Korf did not have the details available. Per Councilman Silverman's request, Ms. Korf noted that she would be happy to forward the details of the warranty to Council. The city is using trolleys today that are about 15 years old although the Federal government defines the vehicle life in terms of 12 years. She noted that the committee focused on the needs of the tourists when the route was determined. There was an attempt to connect hotels and parking areas better than the current route does. She pointed out that the route could be revisited to see if the trolleys could be directed onto Scottsdale Road.

In response to questions from Councilwoman Lukas, Ms. Korf explained that the city doesn't currently own any trolleys; however, six are under contract.

Councilwoman Lukas questioned the cost of the marketing campaign that is planned. Ms. Korf explained that it is the city's goal to work within the budget. Therefore, the city would work more closely with partnerships and find creative ways to improve the brochures. Ms. Korf also confirmed for Councilwoman Lukas that the trolley route would go through the Starwood property.

Councilwoman Lukas stated her support of the free trolley service. She wondered about the cost savings that would be realized by shortening the season by eliminating trolley service in November since November typically has low ridership. Ms. Korf explained that it is the city's aim to bring the costs down by increasing ridership through creative marketing efforts. She noted that the city is also looking into ways to use the trolleys during the off-season perhaps by renting them to other municipalities.

Councilman Ecton agreed that the trolley route should include a portion of Scottsdale Road. He suggested that the trolley could travel one way and come back a different route. He stated his support of lengthening the season rather than shortening it since he felt the trolleys will be a major attraction.

Vice Mayor Ortega explained that one of the biggest problems in the city's downtown is poor distribution of its current parking spaces. He agreed that the separate return routes would be beneficial due to traffic concerns.

In response to additional questions from Vice Mayor Ortega, Ms. Korf confirmed that the trolleys would be available for city-sponsored events.

Councilman Littlefield also agreed that the trolley route should include a portion of Scottsdale Road. In response to additional questions from Councilman Littlefield, Ms. Korf explained that the Stakeholder Committee recommended, if resources allow, that an additional route be created that serves employment cores.

**COUNCILMAN SILVERMAN MOVED TO AUTHORIZE THE TRANSPORTATION DEPARTMENT TO PROCURE SEVEN TROLLEY BUSES FOR \$2.1 MILLION, TO REPLACE LEASED TROLLEYS CURRENTLY USED ON THE SCOTTSDALE ROUNDUP. WITH THIS AUTHORIZATION, NEW TROLLEYS CAN BE PLACED IN SERVICE BEGINNING FALL 2003. IF AUTHORIZED, THE TROLLEY PURCHASE WILL BE FUNDED BY 80 PERCENT FEDERAL GRANT FUNDS (\$1,680,000) AND 20**

**DRAFT**

PERCENT MATCHING FUNDS (\$420,000) FROM THE TRANSPORTATION .2% PRIVILEGE TAX REVENUE. VICE MAYOR ORTEGA SECONDED THE MOTION WHICH CARRIED 7/0.

**Public Comment - NONE**

**City Manager's Report - NONE**

**Mayor and Council Items - NONE**

**Adjournment**

With no further business to discuss, Mayor Manross adjourned the meeting at 8:30 P.M.

**SUBMITTED BY:**

  
\_\_\_\_\_  
Ann Eyerly, Council Recorder

**REVIEWED BY:**

  
\_\_\_\_\_  
Sonia Robertson, City Clerk

**DRAFT**

**CERTIFICATE**

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular City Council Meeting of the City Council of Scottsdale, Arizona held on the 9th day of December 2002.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this 12<sup>th</sup> day of December 2002.

A handwritten signature in cursive script that reads "Sonia Robertson". The signature is written in black ink and is positioned above a horizontal line.

**SONIA ROBERTSON**  
City Clerk

# **COUNCIL SUB-COMMITTEE ON AVIATION ISSUES**

## **Charter**

Oversee the development and implementation of strategic action plans that the City of Scottsdale can undertake to become more involved in aviation air space and airport facility planning in the region.

## **Goal**

To minimize the impact of all aircraft noise from area airports over Scottsdale without impacting the economics of the community.

## **Action**

- Identifying areas of the city most impacted by aircraft noise.
- Supporting neighboring communities in their efforts to do the same.
- Heightened involvement in regional and state aviation issues.
- Functioning as a watchdog over FAA, City of Phoenix (Sky Harbor), Scottsdale and other jurisdictions with air facilities.
- Increased involvement in the Governor's Advisory Council and PAUWG.

## **Staff**

The City Manager should select staff members to coordinate these activities with the Council Members. My recommendation would be Steve Olson and John Little.



ENTER IN RECORD  
PER KB B.O.

## Guy Stepanski

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Voice (602) 619-4900  
Fax (480)-922-9314

12734 N. 78<sup>th</sup> Street  
Scottsdale, AZ 85260-4842

October 11, 2002

City of Scottsdale

Attention: Mayor Manross & Council Members,

After attending the October 7<sup>th</sup> Council Meeting regarding the airport update I realized maybe the Council needed a frank opinion from a long time citizen who has been involved in all aspects of City issues. For those who don't know me I have lived in the valley since I was 12 years old, attended Scottsdale schools. In 1986 I co-founded the North East Scottsdale Property Owners Association, (NESPOA) a voluntary homeowners association formed solely for monitoring and challenging zoning issues in the East Shea area. I served as a board member for nine years and as president for six years until I ran unsuccessfully in the 1992 election as a City Council candidate. Since then I served on many committee's, one term on the Parks Commission as a favor to Mayor Campana and currently as a Commissioner on the Airport Advisory Commission. I built a home and lived in the dark skies and quiet desert area of east Shea for 15 years. I saw the East Shea area develop from undisturbed, open desert to a sea of roof tops. My efforts in this City have always been one of pro-controlled growth.

In 1997 I sold my acre home at 124<sup>th</sup> St. & Gold Dust Ave. and bought a home in Buenavante. My house is less than a mile from the centerline of the SDL runway directly in the path of any air traffic coming from the south that either crosses mid field or enters a left downwind for runway 21. I don't recall any disclosures regarding the airport in my real estate documents. In 1998 I received my private pilots license. Today I do find occasional problems with SDL traffic and traffic generated by the various airports including Sky Harbor because once again I am in the left traffic pattern for planes landing to the east at Sky Harbor.

I want to tell you that many comments made by the Council October 7<sup>th</sup> were correct and to the point. I would like to recap what I have learned in the past three years of studying traffic issues in the valley particularly Scottsdale. Mr. Nesser from the FAA comments were clear and surprisingly to the point when he stated there is very little more the FAA can accomplish to give the valley relief from noise complaints. I think it is time the Council as a whole realizes this is and deals with it on this basis going forward. However, I believe the situation is not as bleak as it has been politicized. I also believe the multitude of complaints are coming from a few select people in relation to the entire population affected by air traffic. A recent newspaper article from an Ironwood neighbor stating the air traffic is not as bad as some of the people make it out to be. I strongly believe Northwest 2000 was not the cause but a catalyst for people to use it as the reason why their quality of life is being jeopardized. Northwest 2000 did change the departure and arrival to Scottsdale and it is true the FAA failed to inform Scottsdale it would affect our routes. I regularly fly IFR so I know first hand how the routes have changed and offer to take any of the Council on a demonstration flight to actually fly the routes. The SDL obstacle departure has absolutely no effect on Scottsdale residents and the arrival route was moved to the west. The original arrival was the 359 radial off of the Phoenix VOR and now it is the 351 radial a difference of probably a mile out by Carefree. After you are north of Carefree/Cavecreek it makes little difference due to little or no population and altitude. When you arrive from the North typically your altitude is no different pre

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Northwest 2000. Typically the aircraft are told to descend to 6-7000' by the time they reach Carefree and I believe the majority of Carefree is 2400' or less.

The reason what ever happens with the FAA is not going to help Scottsdale is because no matter what you work out as you come to the airport you have to get down to pattern altitude which is 2500' for pistons and 3000' for jets. Let me tell you from living as close as I do, I find the arriving piston traffic far more annoying than jets. The jets are higher and the majority of them are not Stage II aircraft. Departures are by far the noisiest operations and I see no relief for the people of Ironwood or the future 750 homes to be built directly north of the departure end of runway three. In addition, a substantial amount of the southwest SDL traffic is actually Deer Valley students on practice approaches to SDL transitioning on to Deer Valley going home. I requested staff contact the flight school operator and ask them to restrict their approach descent to 3000' in lieu of 2540', which would solve numerous complaints. However, once again when you look at the noise complaints there are not a substantial number in this area.

In reality people are making a lot of commotion out of nothing. I was at the airport with an airport operations person when he received a call from a frequent complainer. While on the phone he said this is exactly what I am talking about and said do you see the SW Airlines jet. The op's person replied yes, and the complainer said he is too low at 2500' when in reality the SW jet inbound to Phoenix was 8-10000' and you could barely hear his engines. I could likely file legitimate complaints a half dozen times a day regarding air traffic noise. Why don't I? It is not because I love the sound of airplanes but because there are certain things we have to live with. I don't call the City every time I hear a barking dog, noisy neighbor or the countless irritating leaf blowers day in and day out.

Nothing less of closing SDL will stop the chronic complainers. In fact when the airport was closed for construction we still received complaints. There are some actions we can continue to take, and ideas of how to help mitigate the impact, which are discussed on a regular basis by the airport staff, tenants, and your Airport Commission. I would like to make this letter an invitation to the City Council to have a joint meeting with the Airport Commission so we can discuss the issues frankly and openly. I believe otherwise the City will continue to spend unnecessary time and taxpayer dollars for solutions that don't exist or are unrealistic for whatever reason. The best bang for our dollars would be to fund the Part 150 study.

As a commissioner I will work towards any means possible to help find resolutions but I believe the Council needs to start from a realistic base and the fact is people will always complain about the airport and air traffic noise.

Sincerely,

Guy Stepanski

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